

the executors made on the 12th October, 1881, which shewed 125 shares of Ontario Bank stock at 66, \$3,300, and shewed a sum of \$1,419.40 reserved for loss on Ontario Bank stock and for solicitors' charges. He also referred to other statements of the executors.]

I do not see that in any of the statements there is any appropriation of the Ontario Bank stock to the legacy of \$6,000 to which the appellant claims to be entitled after the death of the life-tenant. . . .

The stock of the Ontario Bank was cut down on the 21st May, 1882, for the first time, by one-half, and the second time on the 31st May, 1896, it being then reduced by one-third; and the respondent Innes (one of the executors) says that he held shares at the time it was cut down. The respondents took no steps to realise upon the stock. They never put it on the market; never put it into a broker's hands; and are not able to say whether it ever reached a figure which would enable them to sell at 66 cents on the dollar net. The appellant does not seem to have been consulted as to its sale or retention. . . .

The learned Master has found that the respondents acted honestly; and I think that there can be no doubt that his finding is correct and entirely warranted by the evidence.

He has also found that they acted reasonably; but that holding is based upon the fact that they were advised by Robert Nicholls (brother of the testatrix) to hold the stock, and that Ontario Bank stock was, particularly by the citizens of Peterborough, looked upon as absolutely safe and good—a finding which relates to the original retention, rather than the continued holding from the year 1878 down to 1882, and later.

I cannot agree that this stock was ever set apart and appropriated for this legacy, so as to set up a trust for the appellant, as distinguished from the general trusts under the will in question. There is no satisfactory evidence given by the respondents of any actual, definite allocation. The contemporary statements negative this position; and in the accounts filed and in the affidavit of Hall for the purpose of obtaining the administration order, the legacy is dealt with as if payable out of the assets of the Ann Nicholls estate. Under the will in question the real and personal estate was devised to the trustees "upon trust to invest the proceeds thereof in such manner as they shall deem most advisable."

This is a similar power to that found in *In re Smith*, [1896] 1 Ch. 71, "to invest in such stocks, funds and securities as they