

HON. MR. JUSTICE LATCHFORD. DECEMBER 29TH, 1913.

RE GODCHERE ESTATE.

5 O. W. N. 625.

Executors and Administrators — Allowance to — Commission — Reasonable Amount—Appeal.

LATCHFORD, J., held, that the compensation payable to administrators was not necessarily limited to a commission on the amounts received and distributed by them.

Re McIntyre & London & Western Trusts Co., 7 O. W. R. 548, 556, and *Re Hughes*, 14 O. W. R. 630, considered.

Application by Official Guardian upon special leave granted by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., for an order setting aside the order of his Honour Judge O'Leary, of the Surrogate Court of the District of Thunder Bay, fixing the amount of compensation to which the administrators of the estate of the late Peter Godchere are entitled for their pains, care and trouble in connection with the estate, on the ground that the compensation should have been limited to commission on the amount collected and distributed by the administrators.

E. C. Cattanach, for motion.

C. A. Moss, contra.

HON. MR. JUSTICE LATCHFORD:—The real and personal estate, so far as realized upon, amounted to \$21,234.17, and out of this there has been properly paid \$3,560.93, leaving in the hands of the administrators when diminished by the compensation and costs fixed by the learned Judge \$16,957.36.

One of the administrators was allowed \$425 and the other \$200. The costs were taxed at \$90.88, including \$20 costs of the Official Guardian.

The compensation is not fixed on the basis of commission, as in *Re McIntyre & London & Western Trusts Co.* (1904), 7 O. W. R. 548, 556, where the late Mr. Justice Street considered that, upon the facts there presented, commission should not have been allowed (as appeared to have been the case) upon the total amount realized, but only upon what was received and also distributed. See *Re Hughes* (1909), 14 O. W. R. 630, where the cases on the point are collected.

There is nothing before me to indicate that the learned Judge appealed from erred. The administrators were en-