

LATCHFORD, J.

MARCH 10TH, 1913.

RE NICHOLLS, HALL v. WILDMAN.

Executors—Liability for Loss on Investment—Acting “Honestly and Reasonably”—62 Vict. ch. 15, sec. 1—1 Geo. V. ch. 26, sec. 33—Limitation of Actions—10 Edw. VII. ch. 34, sec. 47—Administration Order Obtained by Executors—“Action”—Account—Reference—Reopening—Executors’ Remuneration—Solicitors’ Commission and Disbursements—Con. Rule 1146—Costs.

Appeal by the defendant Marianna Wildman, a devisee under the will of the late Ann Nicholls, from the report of the Local Master at Peterborough, upon a reference under an order for administration taken out by the executors, Hall and Innes, declaring that the executors were not liable to indemnify the appellant against a judgment obtained by the Royal Trust Company as liquidators of the Ontario Bank, and dismissing her claim that the executors should account to her for \$200 which they retained from her in 1881 to meet possible contingencies, and as to which the learned Master held her claim barred by sec. 47, sub-sec. 2, of 10 Edw. VII. ch. 34. The appellant also asked that the commission and disbursements of the executors’ solicitors as fixed by the report should be disallowed.

H. T. Beck, for the appellant.

G. H. Watson, K.C., and L. M. Hayes, K.C., for the executors.

G. B. Strathy, for the Royal Trust Company.

LATCHFORD, J.:—The appeal upon the first point fails. In everything relating to the Ontario Bank shares which came into their hands as an investment made by their testatrix, the executors acted “honestly and reasonably,” in the exercise of the discretion expressly conferred upon them by the will, and “ought fairly to be excused.” They are, therefore, relieved from personal liability for the loss which the appellant has suffered: 62 Vict. ch. 15, sec. 1.

I do not wish to be understood as concurring in the opinion that they are also relieved under 1 Geo. V. ch. 26, sec. 33. The latter enactment has, I think, no application to the present case.

Nor can I agree that the right of the appellant to call the executors to account for money admittedly held by them in 1881,