

The learned Chief Justice held him not entitled out of either estate by reason of misconduct. He was of opinion that the appellant's acts of negligence, mismanagement, and breach of trust, made a cumulative case quite sufficient to deprive the executor of the compensation provided by the statute. The learned Chief Justice enumerates the neglects and defaults of the executor; and they are certainly not trifling, or at all to be excused. Nevertheless, they are not the neglects or defaults of a dishonest or fraudulent trustee, and are all capable of being compensated, and the losses resulting from them capable of being made good, in money. That being so, I think it is not a case for depriving him of compensation. The appellant has been trustee of the Hinton estate for nineteen years, and of the McGillivray estate for, I think, fourteen years. The aggregate amount of the money which came to his hands during that term was about \$72,000. It is evident that he must during that period have bestowed much care, pains, trouble, and time in connection with the business of both estates, and, although the care and pains were not of the highest quality, yet his position under the statute was and is that of a person performing services on terms of fair and reasonable remuneration for care, pains, trouble, and time. I think it is the effect of all the decisions on the statute that an executor or trustee is not to be deprived of compensation for actual and beneficial services, though he may also have been guilty of neglects and defaults more or less grave: *Hoover v. Wilson*, 24 A. R. 434. I think that to do so would be to punish him by depriving him of a statutory right, which the Court has no jurisdiction to do. He will be made to account for what he actually received, or must be presumed to have received, or ought to have received, but no more: *Attorney-General v. Alford*, 4 DeG. M. & G. 851; *Vyse v. Fortier*, L. R. 8 Ch. 333, L. R. 7 H. L. 318; *Ex p. Ogle*, L. R. 8 Ch. 716. The Master has charged him with all the losses to the estates resulting from his neglects and defaults, and has allowed him a compensation of \$100 per annum from the Hinton estate, which seems a moderate sum.

It follows that the executor's appeal in respect of his compensation should be allowed as to both estates, and it will be referred back to the Master to fix a proper amount in the McGillivray estate.

The appeal will be allowed with costs.

OSLER, J.A., gave reasons in writing for coming to the same conclusions.

MOSS and GARROW, J.J.A., concurred, but gave no reasons.