

HON. MR. JUSTICE MIDDLETON.

JUNE 30TH, 1914.

RE MCINNES.

6 O. W. N. 672.

*Executors and Administrators — Sale of Land by, under Settled Estates Act — Proceeds Invested by Executors in Mortgage Taken in Name of Account of Supreme Court—Mortgage Moneys Paid to Executors—Special Order Authorizing Account to Execute Release.*

Motion by the petitioners, the executors and trustees under a will, for an order directing the accountant of the Supreme Court of Ontario to execute a discharge of a mortgage.

J. Tytler, for the petitioners.

F. W. Harcourt, K.C., for the infants.

HON. MR. JUSTICE MIDDLETON:—On the 30th April, 1908, Mr. Justice Teetzel made an order under the Settled Estates Act, allowing a sale of the lands; but for some reason this order did not follow the well established practice and direct the moneys to be paid into Court, but directed that the moneys should be held by the executors and trustees and be by them invested and re-invested with the approval of the Official Guardian; the mortgages to be taken in the name of the accountant.

The mortgage was taken in the name of the accountant, and in due time it was paid off to the executors. The executors now tender a discharge of mortgage to the accountant, by which he is asked to certify to the untrue statement that he has received the mortgage money. In the meantime the executors have proceeded to re-invest the money in other securities received by them.

The accountant cannot be asked to discharge the mortgage under these circumstances, but an order may well be made by which, upon an affidavit being filed shewing that the money has been received by the executors—that being so far only a statement—the accountant should be authorised to execute a release, reciting the terms of Mr. Justice Teetzel's order and the payment of the money to the executors thereunder.