not increased by the addition of the solicitor trustee as a party. In *Broughton* v. *Broughton*, 5 DeG. M. & G. 166, it was held that work out of Court under similar circumstances did not come within the exception. There are doubts expressed as to the propriety of the exception, as decided in *Craddoch* v. *Piper*, but that case is now considered as too well settled to be disturbed. In this country *Craddoch* v. *Piper* has been followed in *Meighen* v. *Buell*, 25 Gr. 604, and *Strachan* v. *Ruttan*, 15 P.R. 101.

The point as to services performed out of Court has not been decided in this country, so far as I can find. In Holmested & Langton, at p. 848 (note), there is a suggestion that the English rule does not apply in this country, owing to R.S.O. c. 129, s. 40. Sec. 43 of that Act applies to this Court (Surrogate Court).

In an experience extending over twenty-six years, this is the first occasion in which I have had to face this question. In the absence of any decision in this country, I must dispose of the question as one of first impression. The Legislature having enacted by s. 43 that "The Judge of the Surrogate Court may allow the executor, trustee or administrator, acting under a will or letters of administration, a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration, and in administering, disposing of, and arranging and settling the same, and generally in settling the affairs of the estate, and may make an order or orders from time to time therefor, and the same shall be allowed to an executor, trustee or administrator in passing his accounts," has made a departure from the rule in England, which was probably introduced into this country, that a trustee cannot make a profit of his office. It must be observed that the allowance is for services in the most comprehensive words, but is hedged round with care, for it can only be allowed by the judge; can never be ex parte. If made on a substantive application, it can only be made after due notice, and, when made, is a judicial adjudication. If made, as is usually the case, on the passing of accounts, which can only be done on the application of a party adverse in interest, or when infants are interested, R.S.O. c. 50, s. 73. In the latter case, the official guardian represents the infants; therefore, in all cases the claim for allowance of remuneration is subject to close scrutiny. It seems to me that for a class of work like solicitor's work a bill of items which can be scrutinized is more satisfactory than the fixing of a percentage.

I therefore allow the solicitor's bill of costs as part and parcel of the remuneration. The costs of passing the accounts being entirely work in Court must be allowed. If, upon appeal, it should be held that the solicitor's bill should not be allowed them, in my opinion the quantum of the allowance to the executors should be reconsidered, as I took into account the solicitor's bill in fixing the remuneration.