

Reference to *Re Berkeley's Trusts* (1879), 8 P.R. 193; *Re Farmers Loan and Savings Co.* (1904), 3 O.W.R. 837; *Re McIntyre, McIntyre v. London and Western Trusts Co.* (1904), 7 O.L.R. 548; *Re Griffin* (1912), 3 O.W.N. 759, 1049, 3 D.L.R. 165; *Re Smith* (1916), 38 O.L.R. 67; *Re Fleming* (1886), 11 P.R. 272; *Re Toronto General Trusts Corporation and Central Ontario R.W. Co.* (1905), 6 O.W.R. 350.

What was being dealt with in this matter was an estate of considerable size, handled by the trustees with all due care and skill. They had been allowed compensation—the proper compensation, it must be assumed—for their care, pains, trouble, and time (see the Trustee Act, R.S.O. 1914 ch. 121, sec. 67) down to a certain period, but in respect of a part only of the estate, or, it might be said, upon the basis of the estate being less by \$260,000 (the amount of the mortgage) than it really was; and the question for determination was: how much more should be allowed in respect of the parts of the estate and of the services that were left out of consideration in the Surrogate Court.

It was strongly urged upon the argument that the orders of the Surrogate Judges established a precedent which ought to be followed, and that 3 per cent. should be allowed upon the \$260,000 and 5 per cent. upon the interest collected and disbursed, and perhaps also an annual fee. But that, having regard to all the circumstances, would be an unreasonable amount. The fixing of any sum is more or less arbitrary—it must necessarily be so, even if what is done is merely to fix the rate of “commission” which should be allowed. The learned Judge said that he had tried to fix upon a sum which, added to what was allowed in the Surrogate Court, would, on the one hand, serve as a recognition of the faithful administration of a trust of considerable magnitude, but of comparative simplicity, and, on the other hand, would not be more than reasonable *cestuis que trust* ought to be content to pay. On that basis, \$4,000 would be a proper allowance.

The appeal should be allowed and the amount allowed to the appellants as compensation should be increased to \$4,000. Costs of the trustees and of the Official Guardian should come out of the trust estate.