

is sufficient or insufficient. The advice which the Court is authorised to give is not of that type or kind; it is advice as to legal matters or legal difficulties arising in the discharge of the duties of the executors, not advice with regard to matters concerning which the executors' judgment and discretion must govern.

Another matter was suggested with reference to which no formal question is asked. The executors must keep in mind the principles governing the apportionment between capital and income; and, as indicated in *In re Anson*, the accretions to the shares by the exercise of the options belong to the capital and not to income. The entire income received upon an unauthorised security, or upon a security retained for profitable realisation, does not go to the life-tenant; but everything beyond the legal rate of interest is regarded as an accretion to the corpus to compensate for the risk incident to the particular investment.

The executors argue that a power to retain implies a power to invest in similar securities. No authority is cited for that proposition. The holding of Mr. Justice Hodgins in *Re Nicholls, Hall v. Wildman*, 29 O.L.R. 206, 4 O.W.N. 1511, that a power to invest in particular securities implies a power to retain where the testator has already invested, is quite beside the mark.

The costs of all parties may be allowed out of the estate.

MIDDLETON, J.

OCTOBER 16TH, 1913.

STOCKS v. BOULTER.

Damages—Fraud and Misrepresentation—Rescission of Sale of Farm—Damages Suffered by Purchaser—Shortage in Acreage and in Fruit Trees—Loss of Income from Investment—Remoteness of Damage—Improvements to Property—Loss in Operating—Expenses of Moving—Expenses of Searching Title—Occupation Rent—Quantum.

Appeal by the defendants and cross-appeal by the plaintiff from the report of the Local Master at Picton.

The appeal and cross-appeal were heard by MIDDLETON, J., in the Weekly Court at Toronto, on the 29th September, 1913.

A. W. Anglin, K.C., and C. A. Moss, for the defendants.

D. Inglis Grant, for the plaintiff.