Proudfoot, J.] [September 21

MORROW ET AL. v. CONNOR ET AL.

Jury notice—Qui tam action—Municipal councillors—Trustees—Exclusive jurisdiction of Court of Chancery.

The action was by two ratepayers of A. on behalf of themselves and all other ratepayers against all the members of the municipal council of A., charging them with continuing with knowledge a defaulting treasurer in office and causing loss to the municipality, and charging fraudulent collusion with the treasurer.

Held, that in charging the defendants it was not necessary to use the word "trustees," if, in fact, it appeared that they were trustees, and the law attaches the character of trustees to municipal councillors. The action was one within the former exclusive jurisdiction of the Court of Chancery, and a jury notice was therefore improper.

Semble, the municipal corporation should have been made parties, and the action should have been on behalf of all ratepayers, except the defendants.

W. H. P. Clement, for the plaintiffs.

A. H. Marsh, for the defendants

Proudfoot, J.] [September 21.

RE O'HERON.

Insurance—Benevolent societies—47 Vict. ch. 20 (O.)—R. S. O. ch. 167.

The statute 47 Vict. ch. 20 (O.) does not apply to benevolent societies incorporated under R. S. O. ch. 167, and not authorized to do business as insurance companies.

John Hoskin, Q.C., for infants.

Hoyles, for executor.

Chan. Div. Court.] [September 22.

RE FLEMING.

Executor—Compensation—Commission—R. S. O. ch. 107, ss. 37 & 41.

The judgment of Ferguson, J., reported 11 P. R. 272, and *ante* p. 85, was revised on appeal.

Per BOYD, C., who delivered the judgment of the court.—The right to compensation in this case depends entirely upon the statute which declares that a trustee or executor shall be entitled to a fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the trust estate. The statute has fixed no standard by which the rate of compensation is to be measured, and this imports that each case is to be dealt with on its merits, according to the sound discretion of the Judge, who is to regard the care, pains, etc., expended by the claimant. Nor have the courts laid down any inflexible rule in this regard.

While a percentage has been usually awarded as a convenient means of compensating a class of services which do not admit of accurate valuation, yet the adoption of any hard and fast commission (such as 5 per cent.) would defeat the intention of the statute. There was no duty cast upon the applicant by the so-called precatory clauses of the will, which required him to act against the interests of his co-executor. In other respects, the risk or responsibility which attached upon him as compared with his co-executor is not very appreciable, inasmuch as, subject to the charge in favour of the widow, the whole estate was practically at home in the hands of his co-executor on the death of the testator.

The Master's report was therefore restored without costs, as the appellant had failed in his cross appeal to diminish the sum given by the Master.

Thompson v. *Freeman*, 15 Gr. 384, referred to.

A. C. Galt, for the appeal.

S. H. Blake, Q.C., and *Goodwin Gibson*, contra.

Proudfoot, J.] [September 23.

MCBEAN v. MCBEAN.

Reference—Account—Withdrawing admissions.

In the cause of a reference to take partnership accounts admissions of certain items in the plaintiff's account were made by the solicitor for the defendant, G. McB After the death of the solicitor G. McB. applied to be allowed to withdraw the admissions, swearing that he had not authorized them, and that the admitted items were not properly charge-