

HON. MR. JUSTICE LATCHFORD: The appeal upon the first point fails. In everything relating to the Ontario Bank shares which came into their hands as an investment made by their testatrix, the executors acted "honestly and reasonably" in the exercise of the discretion expressly conferred upon them by the will, and "ought fairly to be excused." They are therefore relieved from personal liability for the loss which Mrs. Wildman has suffered. 62 Vict. ch. 15 sec. 1.

I do not wish to be understood as concurring in the opinion that they are also relieved under 1 Geo. V. ch. 26, sec. 33. The latter enactment has, I think, no application to the present case.

Nor can I agree that the right of Mrs. Wildman to call the executors to account for moneys admittedly held by them in 1881 for her is barred by 10 Edw. VII. ch. 34, sec. 47. The limitations provided by that enactment apply only to an action against a trustee. They have in my opinion no application to a case like this where the trustees themselves come into Court, obtain an order for the administration of the estate in their hands, and upon the reference file an account establishing that at one time they held moneys to which a devisee of their testatrix was entitled. It may well be, as suggested upon the argument, that not only the \$200 to which Mrs. Wildman was apparently entitled but much more was properly expended by the executors. They are, however, under the order which they themselves obtained liable in my opinion to account to her for the \$200 and for her share as a residuary legatee in so much of the items of \$600 and \$348.48 as may not have been expended in administering the estate. On these matters, Mrs. Wildman may have the reference reopened at her risk. In that event the executors who have made no charge for their administration should be at liberty to claim a reasonable commission. If any moneys are found payable to Mrs. Wildman she is to have her costs of the reference back; otherwise she is to pay such costs.

In other respects the report appealed from is confirmed. The direction as to commission and disbursements made by the Master is quite proper under C. R. 1146.

The only order I make as to costs is that the executors are to have their costs of this application—including the costs of the trust company which I fix at \$10 and direct the executors to pay—out of the fund in their hands after payment of the judgment of the trust company.