

ROSE, J.

OCTOBER 15TH, 1918.

*RE HUGHES.

Trusts and Trustees—Reference to Fix Compensation of Trustees for Care, Pains, Trouble, and Time Expended in Respect of Part of Trust Estate—Trustee Act, sec. 67—Scope of Reference—Scale of Allowance Fixed by Surrogate Court with Regard to other Parts of Estate—Quantum of Allowance—Percentage—Reasonable Sum.

Appeal by the Toronto General Trusts Corporation from the report of the Master in Ordinary upon a reference directed by MIDDLETON, J. (Re Hughes (1918), 42 O.L.R. 345), to fix the compensation to be allowed to the corporation "for its care, pains, trouble, and time expended in and about realising, managing, administering, disposing of, and settling the affairs of the trust in so far as the same relates to the portion of the trust represented in" the mortgage dealt with in the order, "including the transfer of the said mortgage to the Accountant of this Court, for which the said trustee has not been compensated." The report fixed the compensation at \$1,000.

The appeal was heard in the Weekly Court, Toronto.

W. N. Tilley, K.C., for the appellants.

F. W. Harcourt, K.C., for the infant cestuis que trust.

M. H. Ludwig, K.C., for the adult cestuis que trust.

ROSE, J., in a written judgment, said that the first ground of appeal was that the Master exceeded his powers in that he inquired into matters antecedent to the transfer of the mortgage to the Accountant. Effect could not be given to this ground of appeal without doing violence to the language of the order of reference.

The second ground was, that the Judges of the Surrogate Court had already decided that the remuneration ought to be upon a certain scale applied by them in passing the accounts of the trustees' dealings with the other portions of the estate; and that, if the matter was not *res judicata*, there was at least the opinion of a competent Court, which ought to be followed. This ground failed upon the facts.

The third ground was that the compensation was inadequate. The learned Judge said, after reviewing the evidence, that the compensation ought to be allowed upon the footing of what an ordinarily careful and competent trustee was entitled to receive.