

submitted to him without directing a reference back, to justify the leave asked for being granted.

Leave granted accordingly; costs of this motion to be costs in the appeal unless otherwise ordered by the Supreme Court in the appeal.

KELLY, J.

MAY 6TH, 1916.

MATHER v. FIDLIN.

*Parent and Child—Agreement to Remunerate Daughter for Services—Action against Executors—Evidence—Corroboration—Remuneration Commensurate with Services—Limitations Act, R.S.O. 1914 ch. 75, sec. 49 (g)—Allowance Confined to Six Years—Costs.*

Action by a daughter of Morgan Silverthorn, deceased, against his executors, to recover remuneration for her services to the deceased and his wife, pursuant to an alleged contract.

The action was tried without a jury at Brantford.

W. S. Brewster, K.C., for the plaintiff.

G. Lynch-Staunton, K.C., and W. A. Hollinrake, K.C., for the defendants.

KELLY, J., after setting out the facts in a written opinion, said that a study of the whole evidence convinced him that the relationship established between the plaintiff and her father, so far as her services were concerned, was founded on a contract for remuneration, not to the amount of \$5,000 and the other benefits stated in a will which he afterwards revoked, but remuneration commensurate with the services performed: *McKenzie v. McKenzie* (1909), 13 O.W.R. 869; *Walker v. Boughner* (1889), 18 O.R. 448, 457; *McGugan v. Smith* (1892), 21 S.C.R. 263; *Murdoch v. West* (1895), 24 S.C.R. 305.

Her story of the agreement was amply corroborated.

The presumption which arises, in the case of services rendered by members of a family living together to one another, that such services are not to be paid for, was amply rebutted in the present case.

The defendants having pleaded the Statute of Limitations, the allowance should be confined to six years: *Re Rutherford* (1915), 34 O.L.R. 395; and a fair allowance for the six years would be \$970; this is in addition to her share of the residue of her father's estate under his will.

Judgment for the plaintiff for \$970 and costs.

The costs of the defendants, the executors, as between solicitor and client, should be paid out of the estate.