

When the motion came on for hearing before a Divisional Court, over which Falconbridge, C.J., was presiding, it appeared to him after some discussion that it was inadvisable for him to take part under the circumstances, and he accordingly withdrew. By consent of all parties it was agreed to go on with the appeal before the two remaining members of the Court.

When it is considered that allowances for maintenance had previously been made to the applicant before the launching of his motion in 1911, and that in the notice of that motion he asked for support and maintenance from the 1st July, 1910, until he arrived at the age of 25 years, colour is lent to the contention that the order made by Falconbridge, C.J., was intended to cover all claims for maintenance which had not thus far been paid, and in addition future maintenance. On the other hand, one must suppose that the parties now opposing this application must have had in mind the said order when the motion was made before Clute, J., for a construction of the will, and when his judgment was formally drawn including that portion hereinbefore quoted and which suggests that in case the parties cannot agree on the question of maintenance it might be adjusted in the Surrogate Court when the accounts of the executors were being dealt with. The same applies to the order of the Divisional Court.

These orders seem clearly to leave that question open to be dealt with by the Surrogate Judge on passing the accounts. All parties seem to have gone before him in that way and under these orders. I think, therefore, that the matter is properly before us by way of appeal from the order of the Surrogate Judge; in the light of the previous allowances for maintenance and of the sums allowed under the order of Falconbridge, C.J., and of the evidence taken before him at considerable length, the Surrogate Judge has come to the conclusion that the sums so paid were and are a reasonable amount to be allowed to the applicant for his maintenance, and that he should not be allowed any further amount for that purpose.

I am unable to see that he has not exercised a reasonable discretion in the matter and was not warranted in so disposing of the matter.

I think his order should be affirmed and the appeal dismissed, but under the circumstances without costs so far as