

The Ontario Weekly Notes

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HIGH COURT OF JUSTICE.

TEETZEL, J., IN CHAMBERS.

DECEMBER 3RD, 1909.

RE DOWLING.

*Infant—Money in Court—Payment out to Testamentary Guardian
—Directions of Will.*

Application by William James Dowling, father of the infant William Loyal Dowling, for payment out of Court of money standing to the credit of the infant.

The money was paid in under the direction of the Judge of a Surrogate Court upon passing the accounts of the executor of the will of James Dowling, deceased.

The testator bequeathed \$500 to the infant, "to be kept out at interest until he becomes of age—I devise William James Dowling to be paid the \$500 willed to his son William Loyal above and he to be his guardian and to keep this money at interest as above mentioned."

J. T. White, for the applicant.

J. R. Meredith, for the infant.

TEETZEL, J.:—Notwithstanding that the money is in Court, and notwithstanding the many judicial rulings that money properly in Court belonging to infants will not be paid out except for maintenance of infants until they attain their majority, I think in this case the money should not have been paid into Court, but that the will of the testator should have been respected and the legacy paid to the applicant in accordance with the wish and direction of the testator, in the absence of strong reasons for not doing so.

In this case I can see no danger of the money being lost or misapplied by the father and testamentary guardian.

I think the case is within *Re McDougall's Trusts*, 11 P. R. 494, and that the application should be granted. Costs out of the fund.