

WILSON V. WILSON—SUTHERLAND, J.—OCT. 1.

Solicitor—Costs of Litigation—Charging Order—Fund Dealt with by Judgment—Construction of Judgment.—An application on behalf of the solicitors for the plaintiff for an order charging the sum of \$750 mentioned in para. 7 of the judgment in the action, dated the 17th May, 1916, and the balance of the insurance moneys to be paid into Court to the credit of the infant defendant under that paragraph, with the applicants' costs of the action. The motion was heard in the Weekly Court at Toronto. It was contended on behalf of the adult defendant that, under para. 11 of the judgment, these costs were to be paid out of the estate of George S. H. Wilson, deceased. It seemed to the learned Judge, however, that, reading paras. 7 and 11 of the judgment together, and particularly having regard to the last clause of para. 11—"As between the fund set apart for the benefit of the infant and the amount which is payable to the adult defendant out of the said insurance money (\$750), the said costs are to be borne proportionately"—the true construction of the judgment was that the costs were to be payable pro rata as between that part of the insurance moneys, namely, \$750 payable to the adult, and that part to be paid into Court to the credit of the infant. The learned Judge therefore directed that payment should be made in that proportion, and that the plaintiff's solicitors should have a charge against these moneys for the balance of their costs unpaid, namely, \$217.32, together with the costs of this application. P. Kerwin, for the applicants. D. J. Kelly, for the adult defendant. F. W. Harcourt, K.C., for the infant.