

Applying that principle to this will, the general estate must bear all the costs of the creation of the trust fund arising from lot 17; but the costs of investing this fund during the minority of the beneficiaries, and of its distribution, must be borne by the fund itself. It is just as if the testator had directed his executors to pay the residue of the proceeds of lot 17 to an independent board of trustees. Until the fund should be created and paid over, the expenses would fall upon his general estate. After payment over, the fund would have to bear the cost of its own administration.

Costs of all parties may come out of the estate; of the executors as between solicitor and client.

HON. MR. JUSTICE LATCHFORD.

MARCH 10TH, 1913.

RE NICHOLLS ESTATE: HALL v. WILDMAN.

4 O. W. N. 930.

Administration—Continuance of Investment—Loss on Same—Liability of Executors—Bar of Action—10 Edw. VII. c. 34, s. 47—Application Only to "Action"—Reference—Costs.

LATCHFORD, J., held, that 10 Edw. VII. c. 34, s. 47, barring claims against trustees only applied to "actions" against trustees and not to a case where the trustees themselves apply for administration and upon the reference admit having received moneys on behalf of a devisee as to which any action by her would be barred.

Motion by way of appeal by the defendant, Marianna Wildman, a devisee under the will of the late Ann Nicholls, from a report of the Local Master at Peterborough, under an order for administration taken out by the executors Hall and Innes, declaring that the executors were not liable to indemnify Mrs. Wildman against a judgment obtained by the Royal Trusts Co. as liquidators of the Ontario Bank, and dismissing her claim that the executors should account to her for \$200 which they retained from her in 1881 to meet possible contingencies and as to which the learned Master held her claim was barred by sec. 47 (sub-sec. 2) of 10 Edw. VII. ch. 34.

The appellant also asked that the commission and disbursements of the executors' solicitors as fixed the report be disallowed.

H. T. Beck, for Mrs. Wildman.

G. H. Watson, K.C., and L. M. Hayes, K.C., for Hall and Innes, executors.

G. B. Strathy, for the Royal Trust Co.