

nature of a penalty should be imposed upon the claimant for not doing what he may not be able to do, or whether able or not, for not doing something which in no way affects the assets of the company.

The order should be (1) that the claim as filed by Harre Robbins upon his foreign judgment should be disallowed; (2) that he be allowed within 4 weeks from this date to file as a creditor another claim if so advised, and upon proper proof of such claim, that he be entitled to a dividend with other creditors of the company, saving all just exceptions as to proof, ranking, etc.

As success on this appeal has been divided, there should be no costs to the appellant, and the costs of the liquidator, of this appeal should be paid to him out of the assets of the company.

I do not interfere with the disposition of costs made by the Master in Ordinary in the order appealed from.

---

DIVISIONAL COURT.

JUNE 13TH, 1911.

FOXWELL v. KENNEDY.

*Will—Executors and Trustees—Renunciation of Executorship—Right to Exercise Office of Trustee—Duties of Office not Separable—Jurisdiction of High Court to Set Aside Renunciation—Surrogate Courts Act—Judicature Act—Interest in Residuary Estate—Doctrine of Perpetuities.*

Appeal by the plaintiff from the judgment of TEETZEL, J., of the 1st March, 1911, ante 821, where the nature of the case and the questions for determination are stated.

W. Proudfoot, K.C., for the plaintiff.

E. D. Armour, K.C., for the defendant James H. Kennedy.

A. J. Russell Snow, K.C., for the defendants Madeline and Frederick Kennedy.

A. J. Anderson, for the defendants David and Joseph Kennedy.

W. A. Proudfoot, for the defendant Downs.

W. A. Skeans, for the defendant Maria Hill.

RIDDELL, J.:—The will of the late David Kennedy in question in this action is that in question in *Kennedy v. Kennedy*, 13 O.W.R. 984.