

LENNOX, J.

OCTOBER 9TH, 1920.

*TROST v. COOK.

Trusts and Trustees—Breach of Trust—Administrator Allowing Large Sum of Money to Remain on Deposit with Private Bankers for nearly one Year after Death of Intestate—Money so Deposited at Time of Death—Loss by Insolvency of Bankers—Personal Liability of Administrator—Trustee Act, sec. 37—Administrator Acting Honestly and Reasonably—Breach Excused.

Action by the only child of Matthew Trost, deceased, against the administrator of his father's estate, to recover a sum of money lost to the estate by the administrator, the plaintiff alleging negligence and breach of trust.

The action was tried without a jury at Port Arthur.
M. J. Kenny, for the plaintiff.
W. F. Langworthy, for the defendant.

LENNOX, J., in a written judgment, said that Matthew Trost died on the 8th September, 1913, intestate, leaving him surviving his wife, Catherine Trost, and the plaintiff, his only child, then an infant of about 15 years of age, and leaving real estate of the value of about \$1,500 and \$12,000 on deposit, at interest, in the hands of Ray Street & Co., private bankers in the city of Port Arthur. At the instance of the widow, who was the natural guardian of the plaintiff, letters of administration were granted to the defendant on the 31st December, 1913. Thereafter, the sum of \$12,000, less a comparatively small sum withdrawn for the payment of debts and other purposes, remained on deposit, at interest, with the bankers named, in the name of the defendant as administrator, until the bankers suspended payment on the 29th August, 1914. When the bankers failed, they were indebted to the estate in the sum of \$10,592.40. A dividend of 25 or 30 per cent. had been paid on this amount, and the balance could not be recovered. The plaintiff, having come of age, claimed to recover from the defendant the amount of the loss.

The learned Judge said that the rule of law that a trustee must not, in the absence of special circumstances, voluntarily leave the trust funds outstanding upon personal security for an undue length of time, was of general application.

After a review of the authorities and a statement of some of the relevant facts, the learned Judge said that it was not suggested and could not be fairly argued that the defendant did not act honestly and with the utmost good faith; and, having regard to

*This case and all others so marked to be reported in Ontario Law Reports.