of the judgment of the Supreme Court was to supersede and annul any effect of the orders of the Court of Appeal, or of the certificates of their judgments, or any entries that might have been made of them, or of the orders, making them orders of this Court, and writs of execution issued by the respective plaintiffs therein, after the judgments of the Supreme Court, to enforce payment of the costs of appeal, must be set aside; and it was not necessary to the said plaintiffs to resort to the Supreme Court for relief.

W. Cassels for the plaintiffs in both suits.

Cattanach for the Railway.

NOTE.—The above note is taken from the judgment of Ferguson, J., the judgment of Wilson, C. J., not having yet been handed out, but it was to the same effect.

Boyd, C., Ferguson, J.] [June 29.

RE WOODHALL.

Administration proceedings—Costs.

The costs should not be given out of the estate in administration proceedings, unless it appears that the litigation has been in its origin directed with some show of reason, and a proper foundation for the benefit of the estate, or has in its result conduced to that benefit. Therefore, in this case, where no benefit was shown to anyone by the administration proceedings, as the same result would have been secured without suit, if the plaintiff had not acted so precipitately, and the said proceedings were taken against the will of the adult beneficiaries.

Held, the expense to which the other parties had been put should be paid by the plaintiff, and the order requiring her to pay the costs should be affirmed, according to the rules laid down in *Mackenzie* v. *Taylor*, 7 Beav. 467, as explained in *Hilliard* v. *Fulford*, L. R. 4 Ch. D. 389, and *Rosebatch* v. *Parry*, 27 Gr. 193.

Held, also, following *Farrow* v. *Austin*, L. R. 18 Ch. D. 58, that the question of the residuary legatees' costs is an appealable matter.

Stonehouse for the plaintiff.

J. Hoskin, Q. C., for the infant defendants.

Sheppard for the adult defendants.

Boyd, C.] [June 30.

BELL V. MCDOUGALL.

Insolvency of firm—Surplus after payment in full of partnership creditors.

J. L. McDougall was in business as lumberman and miller, and as such incurred large liabilities. In 1875 he took into partnership D. C. McDougall, who agreed to put in a certain capital. J. L. McDougall's assets were taken over by the partnership, but not his liabilities. In 1877 the firm became insolvent. Bell, the plaintiff, was appointed assignee under the Insolvent Act of 1875. The firm's creditors proved on the estate of the firm, and J. L. McDougall's separate creditors proved on his separate estate. D. C. McDougall had no separate creditors. In 1882 sufficient had been realized out of the partnership assets to pay the partnership creditors in full, and to leave a surplus. D. C. McDougall petitioned the County Judge in insolvency to have the partnership accounts taken, and his share of the surplus paid over to him. Bell, the plaintiff, under instructions from J. L. McDougall's separate creditors, applied for an injunction to restrain D. C. McDougall from proceeding with his petition to the Judge in insolvency, on the grounds (i) that the partnership between him and his brother was fraudulent as against J. L. McDougall's separate creditors, and gave him no right to any share in the surplus; (ii) that the partnership accounts were very intricate, and could not conveniently be taken in the insolvency matter. An injunction was granted *ex parte*. On motion to continue the injunction—

Held, *In re Caton*, 36 C. P. 308, showed that jurisdiction existed in the insolvency court to deal with the claim of the separate creditors of J. L. McDougall as present in this suit, and this being so, under *Close* v. *Mara*, 24 Gr. 593, that was the proper tribunal to deal with the matter, and if any error arose the proper remedy was by appeal The motion to continue the injunction must be refused; should, however, the judge decline for any reason to entertain the matter as set forth by the assignee in the interests of the individual creditors, the application for injunction might be renewed on amended pleadings, if the plaintiff was so advised.

Moss, Q. C., for the plaintiff.

Lash, Q. C., for the defendant.