

the part of Clear & Green would not have saved any part of the fund, and on the contrary that it was probable that it might have led to the loss of over \$9,500 which still remained in the bank when the fraud was discovered, and which was recovered. The Court of Appeal therefore gave effect to the respondent's appeal and held Clear only liable for £15, and Green, his partner, only for the £4 5s. 6d.

PRACTICE—COSTS—SEVERING IN DEFENCE—APPORTIONMENT OF COSTS—APPEAL—JUDICATURE ACT, 1873, s. 49—ORD. LXV. R. 1; (ONT. JUD. ACT (1895), s. 68)—(ONT. RULE 1170).

In re Isaac, Cronbach v. Isaac (1897), 1 Ch. 251, Kekewich, J., had deprived a trustee who had severed in his defence from his co-trustee, of costs, by directing that but one set of costs should be taxed, and that they should be paid to the co-trustee; from this order the trustee appealed, and the Court of Appeal (Lindley, Smith and Rigby, L.JJ.) held first, that the costs of a trustee are not "left to the discretion of the Court," within the meaning of the Judicature Act, 1873, s. 49 (Ont. Jud. Act, 1895, s. 68, Ont. Rule 1170), and that therefore an appeal lay from the order giving the whole of the costs to the respondent co-trustee; and secondly, that a trustee ought not to be deprived of costs, merely on the ground of his having severed in his defence, without giving him an opportunity to explain the reasons therefor so that the Court may be able judicially to decide whether or not the severance was improper. The Court of Appeal being of opinion that a reasonable ground for the severance had been shown, therefore varied the order of Kekewich, J., directing that the one set of costs allowed to the trustees should be apportioned, but so as to give the appellant only the costs applicable to the work done by him alone.

VENDOR AND PURCHASER—PURCHASER LET INTO POSSESSION BEFORE COMPLETION—EJECTMENT—RECEIVER—RESCISSION—MOTION FOR DELIVERY OF POSSESSION.

Cook v. Andrews (1897), 1 Ch. 266, was an action brought by a vendor for the rescission of the contract of sale, and for recovery of possession of the leasehold property, the subject of the contract. By the contract in question it was provided that possession should be given to the purchaser on payment of a specified portion of the purchase money, he undertaking