

In these circumstances, the judgment merely dismissing the action might stand: in the face of the defence of the trustees no part of the property in question could be reached by the plaintiffs—however it might have been if the beneficiaries alone were defendants.

If the beneficiaries who had not defended desired that the property in question should go towards the payment of their father's debts, they could easily give effect to that desire, out of Court, to the extent of their interests in it.

Not having defended, they got no costs; and as to any claim the plaintiffs might make against them for costs the discretion of the Court might well be exercised in making no order as to such costs.

The order upon this appeal should be one dismissing the appeal with costs to be paid by the appellants to those parties who opposed the appeal.

RIDDELL and LATCHFORD, JJ., agreed in the result, for reasons stated by each in writing.

MIDDLETON and LENNOX, JJ., also agreed.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

FEBRUARY 25TH, 1921.

*LINDSEY v. HERON & CO.

Contract—Formation of—Conversations by Telephone—Offer and Acceptance—Sale of Company-shares—Alleged Mistake as to Company Referred to by Purchasers—Parties Found to be ad Idem.

An appeal by the defendants from the judgment of the County Court of the County of York in favour of the plaintiff in an action to recover \$787.50 on a cheque given in payment for shares of the capital stock of a company. The defence was that the cheque was given by mistake, the defendants' intention being to purchase shares of another company.

The appeal was heard by MEREDITH, C.J.C.P., LATCHFORD, MIDDLETON, and LENNOX, JJ.

I. F. Hellmuth, K.C., for the appellants.

T. N. Phelan, for the plaintiff, respondent.