

D. W. Saunders, for respondents P. M. A. Thorne and others.

Moss, J.A.:—The original judgment in this action contained, amongst other provisions, a reference to the Master in Ordinary to pass the accounts of the dealings of the executors and trustees named in the will of the testator, William Thorne, with the estate which came to their hands, and to fix their compensation.

In proceeding with the reference, the Master in Ordinary found that certain persons, including Horace Thorne, Anna Maria Thorne, and Catherine Thorne, should be enabled to attend the proceedings, and he therefore caused them to be served, and thereafter they were treated and named as parties defendants in accordance with the Con. Rules.

Horace Thorne, Anna Maria Thorne, and Catherine Thorne did thereafter attend the proceedings in the Master's office; and filed surcharges and objections to the accounts filed by the executors and trustees. Among other objections, they sought to surcharge the executors and trustees with the amount of certain moneys said to have been received on account of an indebtedness owing to the testator by the partnership firm of W. H. & B. J. Thorne, which consisted of William Henry Thorne and Benjamin J. Thorne, who at the time of the making of the will and of the testator's death were carrying on business at Holland Landing as tanners and otherwise, on premises owned by the testator.

The surcharging parties are the persons now entitled to certain annuities, the payment of which was charged upon that part of the property of the testator at Holland Landing which passed under the will to William Henry Thorne; and the contention of the surcharging parties before the Master was that the indebtedness of the firm of W. H. & B. J. Thorne was part of the testator's property which did pass to W. H. Thorne. Their contention was upheld by the Master, but, upon appeal to a Divisional Court by the plaintiff John Mills Thorne and the defendants adverse in interest to the surcharging parties, the Master's ruling was reversed. . . .

From this judgment the surcharging parties appealed to this Court. The plaintiff W. H. Thorne, who did not join in the appeal to the Divisional Court, and was therefore made a respondent, and was included with the other respondents in the order of the Divisional Court for payment of the costs of that appeal, appeared on the argument of the appeal to this Court, and complained that he was improperly charged with such costs.