

The appeal was heard by MULOCK, C.J.Ex., HODGINS, J.A., RIDDELL and LEITCH, JJ.

R. U. McPherson, for the appellant.

J. R. Meredith, for the Official Guardian.

The judgment of the Court was delivered by LEITCH, J.:—
The fund . . . amounts to about \$5,500, and is invested in mortgages in Ontario, and realises about 5½ per cent. per annum. William Lloyd, the husband of Hattie E. Lloyd and father of the infant children, died in 1904, leaving property in Texas worth not more than \$350. Hattie E. Lloyd, since her husband's death, has supported the children by her own labour, at a cost of about \$10 a month each, up to the death of one in May, 1910, and at a like monthly amount since for the four surviving children.

Mr. Justice Latchford was asked to direct as a matter of right the payment over to a guardian, domiciled in the State of Texas, of money not derived from the foreign State, but realised and invested and held by a trust company in Ontario in trust for the infants entitled. The learned Judge declined to do so; hence this appeal.

There was no question raised as to the safety of the fund in the hands of the trust company in Ontario, and it was not disputed that it would be forthcoming for the infants when they attained their majority. . . .

It appeared to the Court that the application was not so much for the benefit of the infants as of the mother. Her claim for past maintenance exceeds by \$900 the whole fund in the hands of the trust company. The learned Judge held that the good faith of the applicant was open to question by reason of the exaggerated amount of her claim. Her sureties in the State of Texas make no affidavits of justification. . . .

[Reference to *In re Chatard's Settlement*, [1899] 1 Ch. 712; *Mitchell v. Richey*, 13 Gr. 445; *Stileman v. Campbell*, 13 Gr. 454; *Flanders v. D'Evelyn*, 4 O.R. 704; *Huggins v. Law*, 14 A.R. 383; *Re Mathers*, 18 Pr. 13; *Campbell v. Dunn*, 22 O.R. 98; *Hanrahan v. Hanrahan*, 19 O.R. 396.]

I do not think that a case has been made which will justify this Court in handing over the funds that are now safe and permitting them to be administered beyond the jurisdiction of this Court, without security or any guarantee that they will be wisely and well expended. It is open to Mrs. Lloyd to make an application for an order for future maintenance, and she