

come void (even as between parties) rested on the provisions of the Patent Act, R.S.C. 1906 ch. 61, rather than on sec. 3 of the Ontario Judicature Act, R.S.O. 1914 ch. 56. Special provision is made for raising such a defence in an action for infringement, but this was not such an action. Having regard to secs. 34, 35, 38, and 45 of the Patent Act, it is doubtful whether the defence and counterclaim referred to in the Master's order can, in such an action as this and in the manner now proposed, be entertained by the Provincial Courts of Ontario.

In this aspect of the matter, there was, in the view of the learned Judge, good reason to doubt the correctness of the order from which the applicant sought leave to appeal, and the appeal would involve matters of such importance, that leave to appeal should be given pursuant to Rule 507, clause 3 (b).

Order accordingly; costs in the appeal.

LENNOX, J.

NOVEMBER 13TH, 1915.

HARRISON v. MATHIESON.

Trusts and Trustees—Husband and Wife—Breach of Trust by Husband—Knowledge and Benefit of Wife—Liability.

Appeal by the plaintiff from the report of a Local Judge, to whom a question of accounting in respect of a trust estate was referred.

The motion was heard in the Weekly Court at Toronto.

R. T. Harding, for the plaintiff.

R. S. Robertson, for the defendants.

LENNOX, J., said that the only question now in dispute was as to the sum for which the defendant Mary Mathieson was personally liable. By the report it was found that the estate of John Hugh Mathieson was indebted to the plaintiff in the sum of \$16,105.25. The plaintiff contended that the defendant Mary Mathieson should be held liable for the whole of this indebtedness. LENNOX, J., agrees with the Local Judge's findings of fact, with one exception. In addition to the sums for which the defendant Mary Mathieson was found liable by the report, she should have been found liable for four sums aggregating \$7,699 and interest.