

him \$600 to be paid forthwith and \$100 a month for four months. And I find that the said amounts were duly paid to him or on his behalf as and for his maintenance.

"And I find that the said sums so paid were and are a reasonable amount to be allowed to the said William George Corkett for his maintenance and that he is not entitled to be allowed any further amount for such maintenance.

"I further find that Margaret Jennie Kee consented before me to waive any further claim of maintenance in the event of no further amount being allowed to the said William George Corkett and I therefore find that the said Margaret Jennie Kee is not entitled to any further allowance for such maintenance."

From this order William George Corkett appeals, and in his notice of motion, after setting out that he had previously received various sums, on account of maintenance, prior to the order of the 15th October, 1911, already referred to, and that at the time of the making of such order it was understood "that an application would be made on behalf of the executors for construction of the will of the said George Corkett, deceased, on the question of maintenance upon the said William George Corkett attaining the age of 25 years in the event of his living to attain that age," he goes on further to allege that the "learned Judge of the Surrogate Court erred in refusing to admit evidence as to the facts in connection with the application on which the order of 15th October, 1911, was made," and also "in holding that the amount of the maintenance to which the said William George Corkett was entitled was in any way fixed or intended by the parties or by the Court to be fixed by said order." And further, that the order of the Divisional Court is binding "apart from whether the said order of the 15th October, 1911, assumes to fix such maintenance or otherwise," and that upon the evidence the amounts as fixed by the said order of the 15th October, 1911, were not reasonably sufficient to pay his necessary expenses of maintenance and a reasonable sum should now be allowed.

Upon the application it was contended on the part of those opposing that no appeal could lie as the Surrogate Judge was *persona designata*, and further that the order of Falconbridge, C.J., was a consent order and intended to cover all past unpaid maintenance and all future maintenance. Contradictory affidavits and statements were filed and made.