

1932
* May 2
* May 7

IN THE MATTER OF THE ESTATE OF FRANKLIN DAVID DAVIS,
DECEASED.

MARY JANE ROGERS (A DEFENDANT).. APPELLANT;

AND

HELEN ELIZABETH DAVIS (PLAIN-
TIFF) AND OTHERS (DEFENDANTS)..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Costs—Allowance of separate bills of costs to respondents—Appellant
contending for allowance of only one set of costs.*

The appellant's appeal to this court, attacking the validity of a document as forming part of a deceased's will, had been dismissed, "the costs of all parties in this court" to be paid out of the estate. The Registrar had allowed a separate bill of costs to each of three groups of respondents. Each group had been represented by a separate firm of solicitors. Appellant objected to such allowance on the grounds: (1) The interest of all said respondents on the appeal was the same; (2) Only one joint factum was filed by them (only one fee on factum was taxed and only one allowance made on printing of factum, which costs were divided equally among the groups); (3) All said respondents were represented by one Ottawa agent, which agent had presented the three separate bills for taxation.

Held (Rinfret J. in chambers), that there was no ground for interfering with the Registrar's taxation.

APPLICATION by way of appeal from the allowance by the Registrar of a separate bill of costs to each of three groups of respondents, in the appeal before this Court (1).

Cuthbert Scott for the appellant.

Stanley M. Clark and *E. H. Charleson* for the respondents.

RINFRET J. (in chambers)—This is an application by way of appeal from the decision of the Registrar of this Court, upon the taxation of the bills of costs of the respondents, in respect of the allowance by the Registrar of separate sets of costs to each of three groups of respondents.

Before the Registrar, the appellant objected to the allowance of a separate bill of costs to each of the three groups of respondents for the following reasons:

* Rinfret J. in chambers.

(1) The judgment in the main appeal to this Court is reported *ante*, p. 407.

1. The interest of all these respondents on this appeal was identical, all that was at stake before the court being the validity of the will dated October 4, 1930, in which question the interest of each of the groups of respondents was the same;

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2. Only one joint factum was filed by the respondents (other than the Official Guardian). The appellant submits that it follows accordingly that the respondents were as one party before the court, at the hearing, and that only one bill of costs can properly be presented for taxation;

3. All the respondents were represented by one Ottawa agent, which agent has presented three separate bills for taxation on behalf of the allegedly separate respondents.

There were other objections mentioned in the notice filed before the Registrar, but they were not pressed on the appeal before me.

I know of no law or rule—and none was cited to me—which compels persons who have different shares in an estate to appear by the same solicitor because their interest, as regards their opposition to the claim of the plaintiff, may be identical. (See *Remnant v. Hood* (1).)

In this case there were three separate firms of solicitors representing the three separate groups of respondents, and the rights of these groups to retain the services of the respective firms of solicitors may not be disputed.

It is a fact that only one factum was filed by the three groups of respondents. As a result, only one fee on factum was taxed and only one allowance was made by the Registrar on the printing of factum; and the fee and the cost of printing were equally divided between the three groups of respondents. This had the effect of reducing the total costs; but I fail to agree that, just because, for the sake of convenience, several respondents elect to join in their factum, it should follow that they are to be deprived of their right to a separate bill of costs. Still less, do I think that the sole fact that the respondents were represented by one Ottawa agent may affect their right in that respect.

The judgment of this Court, when dismissing the appeal, was “that the costs of all parties in this Court will be paid out of the said Estate”; and, in my view, the result

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is that each party separately and properly represented before this Court is entitled to the taxation of his bill of costs. Whether, under the circumstances, there should have been given only one set of costs was a question for the court, when pronouncing its judgment, and is not a question for the taxing officer, who has only to give effect to the order upon costs, as adjudicated by the court. The point now raised by the appellant should have been taken, if at all, by speaking to the minutes of judgment.

I find no ground for interfering with the taxation made by the Registrar, and I therefore dismiss the application by way of appeal, with costs. However, on the present application, as all the respondents were represented by one counsel, there will be only one set of costs to them.

Application by way of appeal dismissed with costs.
