

**CASE NO.****VOL. NO.****PAGE**

EDMUND RALPH SAUNDERS

- and -

HER MAJESTY THE QUEEN

(Appellant)

(Respondent)

CAC 167630

Halifax, N.S.

Freeman, J.A.

[Cite as: R. v. Saunders, 2001 NSCA 87]

**APPEAL HEARD:**

May 9, 2001

**JUDGMENT DELIVERED:**

May 9, 2001

**WRITTEN RELEASE OF ORAL:**

May 28, 2001

**SUBJECT: Criminal Law; Probate; Theft by Executor, s. 334 Criminal Code.**

**SUMMARY:** The appellant admitted using more than \$100,000 of funds of an estate of which he was executor for his own purposes, covering the withdrawals with promissory notes. He was convicted of theft of more than \$5,000. contrary to s. 334 of the **Criminal Code**. He subsequently repaid the funds, settling a judgment obtained against him by the estate after he was removed as executor. He appealed his conviction, arguing that an executor was entitled to deal with estate funds as he chose provided that he did not commit waste and accounted for all the assets at the time of closing. Alternatively, he claimed an honest but mistaken belief that an executor could not steal from an estate while entitled to the possession of the assets.

**ISSUE:** Did the use of estate funds for personal purposes of a temporary nature constitute theft?

**RESULT:** The appeal was dismissed and the decision of the trial judge was endorsed. All elements of theft had been proved.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.**