defendant to Mr. Lobb in 1913; and the amounts then paid were not paid over by Mr. Lobb to the plaintiff. One of these payments was made in response to a letter written by Lobb to the defendant, in which he said: "If you care to make a payment on account of the principal secured by the mortgage, Mr. Bolton will accept it now without notice or bonus; you will please let me know if you agree to do so."

The learned Judge said that he found nothing in this letter, nor in anything that was said between the plaintiff and Lobb, to indicate an intention on the part of the plaintiff to authorise Lobb to receive any moneys on account of the mortgage. On no occasion, either expressly or by implication, did the plaintiff authorise Lobb to collect the money for him. The onus was upon the defendant to satisfy the Court that the plaintiff, either by his course of dealing or by express authority, authorised Lobb to receive the money for him. In that the defendant had failed.

Judgment for the plaintiff for $1,000 and interest, with costs.

BOYD, C. DECEMBER 6TH, 1915.

ARMITAGE v. SCRASE.

Costs—Unsuccessful Defence to Action to Establish Will—Issues as to Due Execution and Forgery Raised by Defendants—Incidence of Costs.

ACTION by the widow of George W. Armitage, deceased, to establish a testamentary writing as his last will and testament.

The action was tried without a jury at St. Thomas.

J. B. Davidson, for the plaintiff.

W. K. Cameron, for the defendants.

THE CHANCELLOR referred to McAllister v. McMillan (1911), 25 O.L.R. 1, as to the disposition of costs in testamentary cases, as establishing: (1) that the next of kin can call for proof of a will per testes and cross-examine the witnesses called in support of the will without being subject to the payment of costs; and (2) that, if the surrounding conditions are such as to justify reasonably an investigation into the matter, the party who unsuccessfully litigates may rightly be relieved from the payment of costs (pp. 3 and 4).