

cover. Upon the first branch of the second claim, I find that under the agreement between the parties asphalt pavements were laid by plaintiffs on the streets in question from curb to curb, including that part of the streets occupied by the railway; that in constructing these pavements plaintiffs failed to "tamp" the concrete under the rails, as they should have done, in consequence of which, in order to make the rails firm and to prevent their springing, owing to the concrete bed upon which they were laid being improperly and insufficiently made by defendants, it became necessary for the defendants to break up the pavement, in order, by "shimming" the rails, to remedy the defect in the concrete bed. . . . It was not contended that defendants broke up more of the pavements than was necessary to enable them to remedy the condition of the rails, caused by the negligence and breach of duty of plaintiffs, or that what was done by them was done negligently. Had defendants restored the pavements to their original condition at their own cost, they could have recovered from plaintiffs the expense they would have been put to, and it follows that plaintiffs are not entitled to recover from defendants the cost of these repairs. Second claim dismissed. No costs to either party.

MEREDITH, C.J.

JULY 31ST, 1903.

TRIAL.

RAMSAY v. REID.

*Will—Legacy—Discretion of Executors as to Payment—Vested Interest—Right of Legatee—Payment at Majority—Action against Executors—Adding Parties—Persons Interested in Fund.*

Plaintiff sued defendants, who were the executors of his father's will, for a declaration as to his rights under the will and to recover \$1,000 and interest. The plaintiff based his claim upon the following paragraph of the will: "I direct that my executors shall sell the north half of lot 22 in the 14th concession of the said township of Sombra to the best advantage possible, and from the proceeds thereof pay over to my son John Grant Ramsay \$1,000 at such times and in such amounts as may seem to them expedient, any portion of the said \$1,000 not so paid over to remain on deposit with . . . until so required to be paid over."

A. Weir, Sarnia, for plaintiff.

A. B. Aylesworth, K.C., and F. W. Kittermaster, Sarnia, for defendants.