

done any contention on the part of the society; and the only question to be disposed of was that of costs.

Further reflection had confirmed the view expressed upon the argument, that the costs of the society ought not to come out of the estate. To order that would be to make the successful party pay the costs of the unsuccessful.

The principle on which costs in probate and will cases are paid out of the estate is this: the testator has done something which necessitates litigation, and has so cast the burden upon his own estate.

Here the testatrix had done nothing of that kind. The confusion had not been shewn to be caused by any action of hers; therefore, there was no power to do that which was sought.

The executors should have their costs out of the estate; and, as the University was the main beneficiary, its costs might also be paid in that way.

SUTHERLAND, J., IN CHAMBERS.

OCTOBER 22ND, 1915.

RE CAMPBELLFORD LAKE ONTARIO AND WESTERN
R.W. CO. AND BUCKLEY.

Railway—Expropriation of Land—Agreement with Owner as to Compensation—Meaning of "Compensation" in sec. 210 of Railway Act, R.S.C. 1906 ch. 37—Payment into Court—Collateral Agreement—Farm-crossings—Drainage — Board of Railway Commissioners.

Application by the railway company, under sec. 210 of the Dominion Railway Act, R.S.C. 1906 ch. 37, for leave to pay into Court the money-compensation for parts of lots 17 and 18 in the 5th concession of the township of Hinchinbrooke, taken for the railway, together with six months' interest, and for directions pursuant to sec. 210 et seq.

J. D. Spence, for the railway company.

W. H. Irving, for A. F. Buckley, the owner.

SUTHERLAND, J., said that, by a written option from the owner, accepted by the company, the former was to receive \$20 an acre for the land taken and \$50 "for all damage done to the property on both lots, namely, cutting timber," making in all