

R. S. O. ch. 51. The defendants were ready to pay or had paid all the duty which could be exacted, and the claim of the public officer for more failed. A burden is laid upon private estates by the Succession Duty Act; it should not be increased by the expense of litigation unless something exceptional has arisen. Although the matter turned upon the construction of the will, it is not a case for throwing the costs on the estate of the testator, the scheme of the will being well defined and the language used being apt for giving effect to the testator's intentions. The costs should be paid by the unsuccessful party (the Crown or the Attorney-General), but only one set of costs should be taxed to defendants.

MARCH 28TH, 1903.

DIVISIONAL COURT.

NOLAN v. OCEAN ACCIDENT AND GUARANTEE CORPORATION.

*Life Insurance—Action on Policy—Condition as to Award—Application to Stay Proceedings.*

Appeal by plaintiff from order of MEREDITH, J., (2 O. W. R. 98), reversing order of Master in Chambers (1 O. W. R. 777), refusing to stay proceedings in this action until the amount due plaintiff and the other matters in dispute shall have been ascertained by arbitration in the manner provided by the policy of insurance sued on.

S. A. Jones, for plaintiff.

H. Cassels, K.C., for defendants.

The judgment of the Court (FALCONBRIDGE, C.J. STREET, J., BRITTON, J.) was delivered by

STREET, J.—The case is governed by *Spurrier v. La Cloche*, [1902] A. C. 446, and no action lies, nor does the amount payable under the policy become due, until the determination of the arbitrators to be appointed under the agreement to refer contained in condition No. 15. That is an agreement to refer under sec. 6 of R. S. O. ch. 62, although plaintiff has not signed it; she cannot claim under the policy without assenting to its terms: *Baker v. Yorkshire Fire and Life Ins. Co.*, 92 L. T. 111. Condition 15 does not appear to be in contravention of sec. 80 of R. S. O. ch. 203. It is