

Upon the whole case I am constrained to hold that plaintiff in the issue is upon terms entitled to have the judgment set aside and vacated.

Upon the trial the merits were gone into, and I found, although perhaps not necessary for disposing of points reserved, that plaintiff in the issue was, when the writ of summons issued, indebted to the late William George in the amount claimed apart from interest. The judgment should be set aside only upon such terms as will be a fair and just protection to defendant in the issue.

It would be a great injustice to defendant in the issue not to impose terms. The facts are altogether exceptional. In allowing plaintiff in the issue costs to the extent I do, the imposition of terms is in my power; and, even without that, it is, in my opinion, in my power in this case to do so, and if wrong it must be for an appellate Court to so say. The terms are that an appearance shall be entered by the plaintiff in the issue within 10 days, and that all necessary time shall be extended to defendant in the issue for proceeding with that action. She shall have two weeks from the entry of appearance for the delivery of the statement of claim. The action shall be tried without either party, so far as the Court can prevent it, being prejudiced by the delay. The receiving order will stand, and the receiver will be continued, and the money will remain in his hands for the settlement of such claim as Mary George, administratrix, may establish in the action. Plaintiff in the issue is to get costs of the motion to set aside the judgment to be taxed, and costs of the issue and trial of the issue, which I fix at \$100. Plaintiff in the issue set up that the writ was not personally served, and made contentions not established, so that he is not entitled to all the costs of that issue. These costs are to be set off against such claim as the defendant in the issue may establish. The costs of the action and the trial of it are reserved, and may be disposed of by the trial Judge. If these terms are not accepted by plaintiff in the issue, judgment will be entered for defendant in the issue without costs.