

BRITTON, J.

DECEMBER 8TH, 1904.

TRIAL.

GILBERT v. IRELAND.

Costs—Action to Establish Will—Failure of Charges of Fraud and Undue Influence—Costs out of Estate.

An action to establish a will, tried with a jury at Milton. Judgment was given establishing the will and directing probate. The question of costs was reserved.

BRITTON, J.—Should persons who, in opposing probate of a will, set up fraud and undue influence and fail, ever get costs out of the estate, and if so in what cases? . . .

[Reference to *Goodacre v. Smith*, L. R. 1 P. & D. 359; *Orton v. Smith*, L. R. 3 P. & D. 23; *Tippett v. Tippett*, L. R. 1 P. & D. 54; *Smith v. Smith*, ib. 239; *McAuley v. Kemp*, 27 Gr. 442; *Aylwin v. Aylwin*, [1902] P. 203; *McFadyen v. McFadyen*, 27 O. R. 598; *Wilson v. Grant*, 22 Gr. 39.]

Upon the peculiar facts and circumstances which came out upon the trial, and considering fairly the conduct of the beneficiary, I think the case is well within the rule by which the Court allows costs out of the estate, and I so order as to all the parties.

BOYD, C.

DECEMBER 8TH, 1904.

TRIAL.

AMES v. CONMEE.

Broker—Purchase of Shares for Customer on Margin—Moneys Advanced to Keep up Margins—Recovery—Instructions—Usual Course of Dealing—Practice of Brokers—Discharge of Customer—Obligation of Broker to Sell—Several Orders Included in One Contract—Interest.

Action by brokers against a customer to recover moneys paid to keep up margins on shares bought by plaintiffs for defendant, and interest thereon.

D. E. Thompson, K.C., and W. N. Tilley, for plaintiffs.
C. Millar, for defendant.

BOYD, C.—A person who employs a broker to act for him in the purchase of stock is taken to be aware of the usual course of dealing in such cases and to authorize his agent to act in accordance therewith: *Sutton v. Tatham*, 10 A. & E.