

tion, he takes upon himself an onerous duty, and is unpaid; here, on the contrary, he is paid a reasonable sum for his compensation, and his services are not rendered gratuitously. In case of any difficulty the Courts are always ready to relieve an executor, and there are many companies willing and anxious to administer any estate. One who accepts the position of executor must understand that if he omits to act prudently, he must suffer the consequences, as any other person would.

The result is that the executors will personally pay the costs of the plaintiff, properly incurred, and they will not receive an order to pay these out of the estate, nor to receive their own costs out of the estate.

I have the less regret in being obliged to make this disposition of the matter, as, unless there is more in the case than yet appears, they cannot be liable for the costs of their defence; and as to the costs they are ordered to pay, they have a good cause of action against the solicitor upon whose advice they say they have acted, if such is the fact; and, if such is not the fact, they should rightly suffer. If I had thought that the estate should pay the costs of plaintiff and defendants, I should have deducted from the amount now given to the plaintiff, the amount by which the defendants' costs were increased by the wrong method of procedure taken by plaintiff.

In nothing that has been said should it be considered that I charge the solicitors with bad faith, but the wrong advice of the one (if the executors are telling the true story) has occasioned needless litigation, and the others have made that litigation needlessly prolonged and costly.

The order will be as in *In re Hodginson*, [1893] 2 Ch. 190, with the exception of the costs already spoken of as payable to the plaintiff.

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CLUTE, J.

NOVEMBER 18TH, 1907.

TRIAL.

BURLEY v. GRAND TRUNK R. W. CO.

*Railway—Shunting .Car—Injury to Conductor Crossing Track in Yard—Consequent Death—Proximate Cause of Injury—Accident—Conjecture—Findings of Jury—Motion for Nonsuit.*

Action by Steven Burley, administrator of the estate of Alonzo Burley, deceased, against the Grand Trunk Railway