

RIDDELL, J.

DECEMBER 7TH, 1915.

*RE DINGMAN.

Executors and Administrators—Charges and Expenses—Allowance by Surrogate Court Judge on Passing Accounts of Executor—Costs of Action Unsuccessfully Defended by Executor Allowed out of Estate—Appeal—Surrogate Courts Act, R.S.O. 1914 ch. 62, secs. 19, 34.

Appeal by Jane Coulson, under sec. 34 of the Surrogate Courts Act, R.S.O. 1914 ch. 62, from the allowance by the Judge of the Surrogate Court of the County of Hastings to the executor of the will of Jane Dingman, deceased, upon the passing of his accounts, of his costs of defending an action brought by the appellant and her husband against the executor, in which the executor was unsuccessful, and also the costs of the plaintiffs in that action, which was in the Supreme Court of Ontario, paid by the executor, as adjudged in that action.

The appeal was heard in the Weekly Court at Toronto.

E. G. Porter, for the appellant.

Gideon Grant, for the executor.

RIDDELL, J., delivering judgment upon the appeal, said that the judgment in the action against the executor was for the recovery of \$1,000 from the estate of the deceased George Dingman, and "that the defendant"—i.e., the executor—"do pay to the plaintiffs their costs of this action forthwith after taxation thereof."

It is one of the disadvantages of an executor's position that if he defend an action brought against him as such executor and fail, he may be forced to pay the costs out of his own pocket: *Macdonald v. Balfour* (1893), 20 A.R. 404; but he is entitled to be allowed all reasonable expenses which have been incurred in the management of the estate, and these include the costs of an action reasonably defended. Of course, he could not be allowed the costs of improperly defending an action: *Chambers v. Smith* (1846), 2 Coll. 742; *Smith v. Chambers* (1847), 2 Ph. 221; but to disentitle him there must be something proved to shew the unreasonableness; and nothing was established here.

Reference to *In re Beddoe*, [1893] 1 Ch. 547, 558; *In re Love* (1885), 29 Ch. D. 348, 350.