

of Practice." The notice is somewhat ambiguous, but I accept the interpretation which counsel for the motion says was intended, viz., that opinion, advice, or direction is sought in two matters: (1) the course to be pursued by the executor with respect to the lease; (2) the validity of the lease.

Objection being taken to the practice by counsel for the tenants, I gave effect to his objection; and, as he refused to consent to the motion being turned into any other form of motion, I dismissed the second branch of the application, with costs, fixed at \$5, following *Re Rally* (1912), 25 O.L.R. 112, and also *Re Turner*, ante 1438.

The portion of Con. Rule 1269 (938) which, it is contended, covers the former branch of the application, is (e), by which an application may be made for an order "directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or trustees." But this means any act in or about the estate of which they are executors or trustees. As it is put in *Suffolk v. Lawrence* (1884), 32 W.R. 899, "this only relates to the doing or abstaining from doing by trustees of some act within the scope of their trusts." The section was not intended to cover the case of an executor who was in doubt as to whether he should follow his solicitor's opinion so far as to claim as part of the estate land claimed adversely to the estate. Executors must use their business sense, and not ask the Court to exonerate them in advance: the general duties of executors are so well known that the Court should not be called upon to lay them down on every occasion of apparent difficulty.

This part of the application is also refused.

MIDDLETON, J.

JUNE 20TH, 1912.

RE DRUMMOND.

Will—Construction—Devises of Different Parcels of Land to Daughters of Testator—Division of Residuary Estate—Equalization of Values of Parcels Devised—Powers Personal to Executors—Death of Executors—Duty Devolving on Court—Method of Equalization—Valuation of Parcels—Principle of Valuation.

Originating notice to determine certain matters arising upon the will of the late J. W. Drummond.