

in June, 1911. The executor of Isaac Gordon, Sr., demanded possession of the land and the tenants refused claiming that the lease was good for the term mentioned in it. The executor was advised by his solicitor and believes that the lease was voided by the death of Henry and that it is his duty to sell the farm as executor.

Instead of taking proceedings to obtain possession of the land, he served upon the tenants a notice of motion "for the opinion, advice or direction of the Judge, pursuant to sec. 65 of the Trustee Act and Rule 1269 of the Consolidated Rules 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 Anne E. Hunter*, a judgment delivered by myself yesterday.

The portion of C. R. 1269, which it is claimed 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 solicitors' opinion so far as to claim as part of his 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 too well known that the Court should be called upon to lay them down on every occasion of apparent difficulty.

This part of the application is also refused.