

held that the judgment was irregular, and should have been entered for the costs only. They therefore set aside the judgment and execution with costs, less the costs to which the plaintiff was entitled up to signing judgment, but not the costs of the judgment, as it was irregular.

PRACTICE—COSTS—EXPROPRIATION OF LANDS—COSTS OF PAYMENT OUT OF PURCHASE MONEY—JURISDICTION AS TO COSTS—ORD. LXV., R. 1 (ONT. RULE 1170)—SUPREME COURT OF JUDICATURE ACT, 1890 (53 & 54 VICT., C. 47), S. 5.

*In re Fisher*, (1894) 1 Ch. 450, the Court of Appeal (Lindley, Kay, and Smith, L.JJ.) held that, although Ord. lxv., r. 1 (Ont. Rule 1170), did not confer any jurisdiction on the High Court to award costs in cases in which it had not previously jurisdiction to do so, yet that the Judicature Act of 1890, s. 5, had done so, and enabled the court to award costs of payment out of purchase money for lands expropriated under a special Act, though formerly the court had no jurisdiction to award such costs. The section referred to is as follows: "5. Subject to the Supreme Court of Judicature Act, and the rules of court made thereunder, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid." There appears to be no similar provision in Ontario. See, however, the recent Act as to costs of proceedings before a judge as a *persona designata*, 56 Vict., c. 13, s. 5 (O.).

EXECUTORS—LIABILITY OF EXECUTOR FOR DEFAULT OF CO-EXECUTOR—PUTTING ASSETS INTO SOLE CONTROL OF CO-EXECUTOR.

*In re Gasquoine*, *Gasquoine v. Gasquoine*, (1894) 1 Ch. 470, it became necessary to consider the rule laid down in *Candler v. Tillett*, 22 Bev. 257, where it was held that an executor is liable for the default of his co-executor, where he does any act by which the co-executor obtains sole possession of the assets of the estate. In the present case the testator's estate was entitled to a large amount of American railway bonds, which it became necessary to sell. They were issued payable to bearer, but the holder could register them, after which they could be transferred only by entry on the books of the company, but the owner could