

which it entered into for the repairs; but in this he erred, as it was clear that an executor had no authority so to bind his co-executor.

No evidence was given at the trial of the appellant having approved of the repairs being made by the plaintiff.

There was no escape from the conclusion that the plaintiff was not entitled to recover against the appellant. Viewed strictly, her defence was a defence only to the amount of the plaintiff's claim in excess of \$158—in effect, all that she sought was to reduce the plaintiff's claim to that sum. In that she had failed at the trial, for the claim had been reduced by only \$58.01. Perhaps, in view of her denial of personal liability and of having contracted with the plaintiff, either for herself or for the estate, it would be scarcely fair to hold her to what in strictness might be the result of the position taken in her affidavit.

On the whole, the learned Chief Justice had come to the conclusion that the proper disposition to be made of her appeal was to allow it without costs and to vary the judgment by dismissing the action as against her without costs, providing by the order now pronounced that the judgment and order are not to prejudice the right, if any, of the corporation, to be indemnified out of the estate for what they were required by the judgment to pay and their costs of the action and of the appeal.

The contention based upon the provisions of the Steam Boilers Inspection Act and regulations under it was disposed of upon the argument adversely to the appellant, there being no evidence that such a regulation as was relied upon was in force when the plaintiff's work was commenced.

Remarks upon the expensive litigation over a trifling amount.

FERGUSON, J.A., agreed with MEREDITH, C.J.O.

MACLAREN, MAGEE, and HODGINS, JJ.A., also agreed with MEREDITH, C.J.O., except as to the disposition of the costs of the appeal, which they thought should be paid by the plaintiff.

In the result the appeal was allowed with costs.