In this case I should have followed the rule laid down in Davies v. Gregory, 3 P. & D. 28, Roe v. Nix, [1893] P. 57, Brown v. Penn, 12 Times L. R. 46, and Browning v. Mostyn, 13 Times L. R. 184, and granted the plaintiff his costs out of the estate, but for his acceptance of a payment of $1,500 under the will which he afterwards impeached, and his execution of a release under seal in which the terms of the will are recited. He is thereby estopped from contesting the validity of the will. He said, at the time he received the $1,500 on account of the bequest to him, that it was better to take the money than go to law.

The costs of all parties except the plaintiff will be paid out of the estate.

OCTOBER 18TH, 1902.

C. A.

LEEDER v. TORONTO BISCUIT CO.

Master and Servant—Injury to Servant in Factory—Elevator—Defects—Safeguards—Signals—Negligence—Findings of Jury.

Appeal by defendants from judgment of MEREDITH, C.J., in favour of plaintiff, upon the findings of the jury in an action for damages for injuries sustained by plaintiff, while in the employment of defendants, by their alleged negligence. Plaintiff fell down an elevator shaft not provided with self-closing gates. There was no person in charge of the elevator. The workmen used it when necessary. The plaintiff had been using it, and, supposing it was still at hand, whereas it had been withdrawn by others, stepped into the shaft, and was injured. The jury found that the factory inspector was asked by defendants if the safeguards of the elevator were sufficient, and said they were; that the defect in the hoisting apparatus consisted in the want of a proper signal and of a self-acting guard; and that the accident was due to defendants' negligence.

W. R. Riddell, K.C., and R. H. Greer, for appellants, contended that, on the evidence, plaintiff was negligent in backing towards the shaft without looking, and that, on the finding of the jury as to the factory inspector, they were entitled to judgment.

F. Denton, K.C., and A. D. Crooks, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, JJ.A.) was delivered by

OSLER, J.A.:—The jury found that there were two defects in the condition or arrangement of the hoisting apparatus . . . These defects are quite independent of each