

to allocate all these Hudson Bay shares (income and capital) to one or other of the named charities: In re White, [1893] 2 Ch. 43.

The restraint upon the sale of the Isle of Wight land till a tunnel is made between the Isle and the mainland, if such should be made within the lifetime of any of the executors or twenty-one years thereafter, would appear to be an illegal provision under In re Rosher, 28 Ch. D. 801, followed and approved of in Blackburn v. McCallum, 33 S. C. R. 65.

These were all the points before me, and counsel agreed that the disposal of these would sufficiently clear the way for proceeding with the administration of the estate, and I answer them as above indicated.

Costs out of the estate.

MIDDLETON, J.

NOVEMBER 17TH, 1910.

### HUNTER v. HAMILTON BRIDGE WORKS CO.

*Negligence—Injury to and Consequent Death of Servant—Obligation to Employ "Look-out Man"—Cause of Injury—Voluntary Incurring Risk—Injury Caused Solely by Negligence of Deceased—Forgetfulness—Costs—Issue between Defendants—Claim for Indemnity.*

Action for damages for the death of one Hunter, alleged to have been caused by the negligence of the defendants, the Hamilton Bridge Works Co. and the Hamilton Steel Co., or one of them.

The action was tried at Hamilton, before MIDDLETON, J., and a jury.

W. A. Logie, for the plaintiff.

G. Lynch-Staunton, K.C., for the defendants the Hamilton Steel Co.

J. W. Nesbitt, K.C., and D. L. McCarthy, K.C., for the defendants the Hamilton Bridge Works Co.

MIDDLETON, J.:—In this action, after the best consideration I can give, I conclude that the plaintiff fails:—

(1) Because there was no evidence upon which the jury could find an obligation on the part of the bridge company to employ a "look-out man."