

the \$4,022.67 income, the total value of the estate would be \$104,025.65.

Having regard to the labour and responsibility involved in the carrying out of the testator's directions, I am unable to reach the conclusion that the learned Surrogate Court Judge allowed an excessive amount. On the contrary, I am of opinion that, if he erred at all, it was in not allowing a larger sum. I have not overlooked the circumstance that the estate consisted largely of shares in companies, which, it was argued, were readily convertible; but shares in companies are liable to fluctuation in value, and a loss accruing to the estate because of their falling in value might, under some circumstances, render executors liable therefor, although exercising what they considered good judgment. Such a risk on their part should not be overlooked when compensation for their services is being fixed. No complaint is made that the executors in any respect failed in their duty; and it, therefore, may be assumed that they exercised good care and judgment in the administration of the very large estate intrusted to them.

I therefore, am, with very great respect, unable to agree with the view expressed by my learned brother Middleton, and think the order of the Surrogate Court should be restored, with costs of this appeal.

HON. MR. JUSTICE MIDDLETON. NOVEMBER 7TH, 1912.

SINGLE COURT.

SEGUIN v. HAWKESBURY.

4 O. W. N. 239.

Way — Municipal By-law to Close a Street — Motion to Quash — Railway Act, sec. 238 — Discretion to Refuse Motion — Costs.

Motion to quash a by-law of the town of Hawkesbury providing for the closing of a street. It was passed in pursuance of an arrangement made by the town with the C. N. R. Co., which arrangement was confirmed by an order of the Dominion Railway Board. The order in question, however, did not provide for the closing of the street, but only for its diversion, and was, admittedly, within the competence of the Board.

MIDDLETON, J., *held*, that while the municipal proceedings had been taken under a misapprehension, no harm had accrued, and the application was useless and vexatious.

Motion dismissed with costs.

Motion to quash by-law 179 of the town of Hawkesbury.