

took the property as tenants in common, the one having an absolute, and the other a conditional estate; and that the condition meant the death of T. G. at any time, and not merely during the lifetime of the testator.

Appeal allowed with costs.

Mellish, for the appellant.

Borden, Q. C., for the respondent.

Exchequer Court.]

18 May, 1896.

MURRAY & CLEVELAND V. THE QUEEN.

*Contract—Public work—Progress estimates—Action for payment on
—Engineer's certificate—Revision by succeeding engineer.*

A contract with the Crown for building locks and other work on a Government canal, provided for monthly payments to the contractor of 90 per cent. of the work done at the prices named in a schedule annexed to the contract, such payments to be made on the certificate of the engineer, that the work certified for had been executed to his satisfaction, approved by the Minister of Railways and Canals; the certificate and approval was to be a condition precedent to the right of the contractor to receive payment of the 90 per cent., and the remaining 10 per cent. of the whole work was to be retained until its final completion; the engineer was to be sole judge of work and material and his decision on all questions with regard thereto, or as to the meaning and intention of the contract, was to be final, and he could make any changes or alterations in the work which he should deem expedient.

The work to be done included the construction of a dam, and after it was begun the engineer decided the state of the river bed required such dam to be made much deeper than was first intended. The earth for the dam was all to be brought from a certain place, but owing to the change, that place could not supply enough, and by direction of the engineer the material excavated from the lock pits and entrances thereto was used for the purpose and paid for at the same rate as that first used, and the contractor was also paid the price specified in the schedule for carrying away the excavated material and depositing it in a bay in the vicinity. The engineer who certified to these payments