of the witness on whose oath it was proved, it was set aside by the judge of probate, on the testimony of the remaining witness, M. H., and his brother, that M. H. did not sign his name to the will as witness until after the testator's death.

Held, reversing the decision of the judge of probate, with costs of the appeal, and costs below, to be paid by the petitioner, that, after the long lapse of time, it was impossible to accept the evidence of M. H. and his brother —both being interested parties—to establish the invalidity of the will, as against the oath of the deceased witness upon whose testimony it was proved.

Held, that while some weight should be attached to the finding of the judge of probate, it was impossible for the court, on appeal, to feel bound by such finding, when it appeared that he came to the conclusion he did simply on the evidence of the two interested parties, and without considering other facts bearing on the case.

The devisee of a portion of the property under the will conveyed his title to a third party, and by several intermediate conveyances it came to M. et al., who opposed the decision of the judge of probate setting the will aside.

Held, that M. et al., as "parties interested," were competent parties, and clearly entitled to be heard, even though "parties interested" were not specifically mentioned among those to be cited.

Held, that the naming specifically of heirs, devisees, legatees, and next of kin, in the statute, was merely a matter of direction, leaving it open to those having an interest to intervene for the purpose of protecting their rights. *Re Estate of Ranna W. Hill*, 34/494.

21. Proof of execution — *Acknowledgment—Witnesses—Appeal.*] — The last will and testament of A. C. was contested on the ground that it was in the handwriting of the residuary legatee, that it did not express the true will of the deceased, that deceased did not know or approve of it, and that it was not properly executed, not having been "signed or acknowledged by deceased in the presence of two or more witnesses, present at the same time," etc.

The evidence showed that, at the time the will was executed, deceased was present, but was sitting about fifteen feet away from the witnesses; that the words at the end of the will were read over in a low tone so that the witnesses were unable to say whether they were heard by deceased or not. Neither of the witnesses was able to say that the signature of deceased was affixed to the will when they signed, or that he saw it if it was there, and both agreed that, if the signature was there, deceased did not in their presence acknowledge it to be her signature; nor did they hear her asked the question whether it was her signature; nor was there evidence of any other act or conduct on her part which could be considered the equivalent of an acknowledgment. According to the evidence of the witnesses she said nothing, and appeared to be indifferent to what was going on. One of the witnesses was unable to say, after leaving, whether he had witnessed a will or not.

Held, that, assuming it to be true that deceased was asked, in presence of the witnesses, whether this was her will, and whether she wished the witnesses to sign, the evidence did not go far enough, it being essential to show that the witnesses heard both question and answer. *In re Estate of Alicia Cullen*, 36/482.

On appeal to the Supreme Court of Canada—

Held, affirming the judgment appealed from, that two courts having pronounced against the validity of the will such decision would not be reversed by a second court of appeal. *McNeil v. Cullen*, 35 S. C. C. 510.

V. (L) Fees and Costs.

22. Action against executor — *Costs paid out of estate.*]—In an action against executors involving the construction of a will, where the plaintiff succeeded as to part of her claim and failed as to another part, the costs of both parties were ordered to be paid out of the estate. *Williams v. Thurston*, 21/357.

VI. (A) General Rules.

23. Construction — *Words importing condition — Intestacy — Vesting.*] — The testator K., by his will bequeathed all his property to his executors upon certain trusts. One bequest was of a sum of $20,000, "in trust, that the trustees, etc., do pay the income and interest thereof" unto his daughter Hannah Moulton, wife of Edward C. Moulton, half yearly, "during her natural life," and it was further provided as follows:—"And from and after the decease of my said daughter, Hannah Moulton, I will and declare that the said trustees, or the survivor of them, etc., do and shall pay and distribute said principal sum of $20,000, above mentioned, to, between and among the children of my said daughter, Hannah, and their legal representatives, respectively, equally, share and share alike, to their own use and uses forever."

Hannah's son, Samuel K. Moulton, was living at the death of the testator, but died soon afterwards, intestate and unmarried. Hannah's other children died before the testator.

Held, that the share, or estate in remainder, vested in Samuel K. Moulton, at the testator's death; that the trust existed and was declared, and the other words were a mere direction to pay from and after the life tenant's death.

The court is always slow to construe the words of a testator as importing a condition, if a different meaning can fairly be given to them.

In construing a will the court will prevent an intestacy, if the language will reasonably admit of that being done. So the court always favors a vesting. (Meagher J.) *Caie v. Moulton*, 40/308.

VI. (B) Designation of Devisees and Their Shares.

24. Residuary bequest.] — Testatrix, after making certain specific bequests in the