

THE  
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING JULY 5TH, 1902.)

VOL. I.

TORONTO, JULY 10, 1902.

No. 26.

STREET, J.

JUNE 26TH, 1902.

TRIAL.

ALLAN v. REVER.

*Dower—Assignment by Infant Devisee—Rights of Executor—Devolution of Estates Act—Assent of Executor subsequent to Action.*

Action by widow and infant son of William Allan, deceased, to recover possession of 50 acres of land from a tenant of deceased. William Allan died 3rd August, 1901. By his will he devised 150 acres to his infant son, and made no provision for his widow. He named his son and one Ritchie executors. Ritchie proved the will on the 30th August, 1901. On 14th April, 1902, the son executed a conveyance of 50 acres of the land to his mother for her life, as and for her dower in the whole. On the 20th September, 1900, the deceased had made a lease under seal of the same 50 acres to defendant for five years from 1st March, 1901, under which he claimed title. This action was begun on 1st May, 1902, and after it was begun Ritchie executed a deed poll, declaring that he assented to the devise to the infant, and that it was not necessary to sell the lands for payment of debts or otherwise, and conveying the land to the devisee, and consenting to be added as a party.

W H. Blake, K.C., for plaintiffs.

A. Shaw, K.C., for defendant.

STREET, J.:—A dowress whose dower has not been assigned has no estate in the land out of which she is entitled to dower, but as soon as her dower is properly assigned she is entitled to claim possession of the land assigned to her in priority to leases created by her husband without her assent during the coverture: *Stoughton v. Leigh*, 1 Taunt. 402, 410. . . . Under sec. 4 of the Devolution of Estates Act, R. S. O. ch. 127, all estates of inheritance vested in any person shall, on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his legal personal representatives from time to time, and subject to the payment of his debts. The right to dower, or to compensation in lieu of it, is preserved to