

in charge when the work was done, having decided as to its character and value, his decision was final and could not be reopened nor reversed by his successor.

*Held*, also, that the necessary certificate having been given and approved by the Minister, the contractors could proceed by action upon the progress estimate, and were not obliged to wait until the work was completed and the final certificate given before suing.

Appeal allowed with costs.

*McCarthy*, Q.C., and *Ferguson*, Q.C., for appellant.

*Hogg*, Q.C., for respondent.

## Province of Ontario.

### COURT OF APPEAL.

From Robertson, J.]

[Oct. 29, 1895.

COWAN *v.* ALLEN.

*Will—Construction—Executory devise—Dower—Practice—Administration—Judgment—Adding parties.*

A testator, after devising specifically described properties to each of his three sons, each devise being subject to charges in favor of named beneficiaries, proceeded as follows: "I will and bequeath that should any of my three sons die without leaving issue and leave a widow, she shall have the sum of fifty dollars per annum out of his estate so long as she remains unmarried, and the balance of the estate shall revert to his brothers with the said fifty dollars on her marriage." One son, after the testator's death and after accepting the devise to him, died without lawful issue, leaving a widow.

*Held*, per HAGARTY, C. J. O., and OSLER, J. A., that this clause took effect upon the son's death and gave an executory devise over.

Per BURTON, and MACLENNAN, JJ.A., that the clause was limited to death in the testator's lifetime.

In the result the judgment of ROBERTSON, J., was affirmed.

*Held* also, per HAGARTY, C. J. O., and OSLER, J. A., that notwithstanding the executory devise the deceased son's widow was entitled to dower, BURTON and MACLENNAN, JJ.A., expressing no opinion on this point.

Per MACLENNAN, J. A.: If a person is improperly made a party in the Master's office after judgment in administration proceedings, he is not limited to moving against the order making him a party, but may appeal from the report.

*Moss*, Q.C., and *R. R. Hall*, for the appellants.

*Shepley*, Q.C., for the respondent, Allen.

*W. R. Riddell*, for the respondent, Jean Cowan.