

under the will; the claim that she is a devisee in remainder under the will cannot be given effect to; but she is an heir of Pierre Sharon, and will be heard in the Master's office. Her appeal should be dismissed.

For the plaintiff's appeal the reasons are adduced, viz., that all parties relied upon the interpretation of the will in *Re Sharon and Stuart*, 12 O.L.R. 605, and they now desire to give evidence that all the heirs of . . . Pierre Charron, deceased, consented to a division of the estate. This is quite unnecessary. It has already been pointed out that evidence of everything dehors the will can be effectively taken, and should be taken, in the Master's office in the partition proceedings. No evidence as to family settlement, etc., can affect the meaning of the will itself.

While Duby and Chevalier should have their costs here and below paid by the plaintiff, who brought them in, there should otherwise be no costs. . . .

The last clause in the judgment appealed from, directing the Master to determine what improvements have been made on the property by the plaintiff and defendants, and the value thereof, is of course conditional on any such having made improvements under mistake of title; and the inquiry will not be as to the value of the improvements, but as to "the amount by which the value of the land is enhanced by the improvements"—quite a different thing. See R.S.O. 1914 ch. 109, sec. 37. In settling judgments, "officers of the Court should endeavour to use the words of the statute and not employ terminology which may seem to them to be equivalent:" *Re Coulter, Coulter v. Coulter* (1907), 10 O.W.R. 342.

MULOCK, C.J.Ex., and HODGINS, J.A., concurred.

CLUTE, J., was of opinion, for reasons stated in writing, that the defendants Elizabeth Duby and Louis Duby and Albert Chevalier had, by their possession, as to their respective parcels of land, acquired title thereto as against the three brothers, Oliver, Joseph, and Gilbert and those claiming under them, and in the partition were entitled to $\frac{2}{3}$ of the same respectively, and the judgment below should be varied accordingly; and, with this variation, that all three appeals should be dismissed; the costs of all parties, including the costs here and below of the defendants the Dubys and Chevalier, to be paid out of the estate.

Judgment as stated by RIDDELL, J.