

HON. MR. JUSTICE MIDDLETON. NOVEMBER 6TH, 1912.

CHAMBERS.

RE HORACE B. ALLEN.

4 O. W. N. 240.

*Will—Devise to Widow Durante Viduitate—Must Elect as to Dower
—Possible Further Election under Devolution of Estates Act.*

MIDDLETON, J., *held*, that a devise of all a testator's lands to the widow *durante viduitate* puts her to her election as to whether she will take the interest given her by the will or her dower.

Marriott v. McKay, 22 O. R. 320, and *Westacott v. Cockerline*, 13 Grant 80, followed.

Originating notice to determine a question arising upon the construction of the will and in the administration of the estate of the late H. B. Allen, who died on the 16th January, 1910.

A. A. Miller, for the widow.

E. C. Cattnach, for the children (infants.)

HON. MR. JUSTICE MIDDLETON:—By his will the deceased gives all his real and personal estate of every nature and kind to his wife for her own use and benefit for her natural life or so long as she does not re-marry. Save for the appointment of executors, this constitutes the whole will. The property consists largely of real estate.

It was admitted that the will gave the widow an estate in the lands during widowhood, and that save as to this estate the testator died intestate as to his realty. It was also admitted that the personalty would go to the widow absolutely.

The widow claims that the will does not put her to her election, and that she is entitled to an estate during widowhood in the testator's lands and is also entitled in her own right to her dower interest in the same lands. She now seeks, under the Devolution of Estates Act, to elect to take a one-third interest in her husband's undisposed of real estate, i.e., in all his real estate subject to her estate during widowhood, in lieu of her dower.

I think I am concluded by authority, and that, as put by Boyd, C., in *Marriott v. McKay*, 22 O. R. 320, "a devise of all the lands to the widow *durante viduitate* puts her to