

with each other or that they can all be reconciled. Upon the whole, the weight of authority appears to be decidedly in favour of the view taken by the Divisional Court, that this is not a proper case for the appointment of a receiver. The contract for the paving and maintenance is a single contract, and the money is only divided or apportioned for the purpose of payment. It is significant, also that the final certificate is not to issue until the expiration of the 10 years, and then only for the amount (if any) then found to be due. It is not at all certain that any part of the 10 per cent, retained by the corporation will ever be due or payable to the defendant, in which case the action of the Court in appointing a receiver would be wholly barren and fruitless.

Of the cases that have been referred to, I think that of *In re Johnson*, [1898] 2 I.R. 551, bears the closest analogy in its facts to the present; and in that case an Irish Divisional Court held that it was not a proper case for the application of the principle of equitable execution.

Appeal dismissed.

*R. T. Harding*, for plaintiffs. *R. S. Robertson*, for defendant.

Full Court.]

[June 17.

WARREN, GZOWSKI & Co. v. FORST & Co.

*Evidence—Telephone conversation between parties—Testimony of persons hearing words of one party—Admissibility.*

Appeal by the plaintiffs from the judgment of a Divisional Court, 22 O.L.R. 441, ordering a new trial on account of the rejection by the trial Judge of certain evidence tendered by the defendants.

The parties are brokers in Toronto and the dispute is over a stock transaction. Both plaintiffs and defendants admit that there were telephone conversations between them on the 28th and 29th of June.

The defendants proposed to have their stenographer, Annie Slough, who claimed to have been in the same room as her employer during the conversation of the 28th, testify as to what he said through the telephone on that occasion. The trial Judge refused to allow her to do so, on the ground that she could not swear that it was the plaintiff Gzowski that was at the other end of the line, or that he had heard what the defendant Forst had spoken into the telephone. The Divisional Court over-