

3. Such a declaration so worded as to take effect only on the death of the insured is a testamentary document, and therefore invalid unless executed and attested as a will. CAMERON, J.A., dissenting. *Habergham v. Vincent*, 2 Ves. 204, and *Foundling Hospital v. Crane*, [1911] 2 K.B. 367, followed.

The deceased by his will gave all his property, real and personal, "including all my life insurance," to the defendants as trustees upon certain trusts, and also said: "Any of my life insurance which is made payable to my wife specifically shall be her own estate, moneys and property, and are not intended to be affected by the terms of this will." He had previously executed, in respect of two of his policies not made payable to his wife, declarations as outlined in paragraph 2 above.

Held, CAMERON, J.A., dissenting, that those two policies remained part of his general estate, and that the defendants, who had received and paid over the insurance moneys to the widow, were entitled to recover the moneys from her on their counterclaim.

Hull and J. K. Sparling, for plaintiff. *Mulock*, K.C., and *J. W. E. Armstrong*, for defendants.

Full Court.] MERRIAM *v.* PUBLIC PARKS BOARD. [March 18.

Building contract—Covenant for payment on completion to satisfaction of engineer—Final certificate of engineer—Work not completed.

The defendants covenanted with the plaintiffs that if the work the plaintiffs were to do should be duly and properly executed and completed to the satisfaction of the engineer, the defendants would pay the plaintiffs the amount provided for in the contract, which was for the construction of a dam across the Assiniboine River, "with sheet piling so as to constitute a water-tight plane." The contract further provided as follows: "So soon as the contractor shall have completely fulfilled the contract requirements, the engineer shall forthwith so certify in writing to the parties, and thereupon it shall be deemed that he (defendants) have taken over the work." According to the evidence the plaintiffs failed to construct the dam so as to make it water-tight. They relied however, upon a certificate given by the engineer setting forth the full amount of the contract price with debits and credits as if all the work had been performed, but concluding with the expression, "Retained pending repairs, \$500," and concluding