

preferred that her estate should pass to her sons and their issue rather than by any possibility to a son-in-law whom she had never seen.

The costs of all parties may come out of the estate.

MASTER IN CHAMBERS.

APRIL 17TH, 1913.

SWALE v. CAN. PAC. R.W. CO.

4 O. W. N. 1110.

*Third Party—Order of Directions—No Right to Appeal Reserved —
Amendment of Order—Con. Rules 312 and 640—Terms—Costs
—Indemnity.*

MASTER-IN-CHAMBERS allowed an order of directions for the trial of a third party issue to be amended after trial had, so as to give the third parties the right of appeal from the judgment herein (24 O. W. R. 224) upon terms as to costs, etc.
Gilleland v. Wadsworth, 1 A. R. 82, and *Peterkin v. McFarlane*, 4 A. R. at pp. 44 and 45, referred to.

Motion by third parties, Suckling & Co. Ltd., to amend an order of directions providing for the trial of the third party issue by inserting a clause therein allowing them to appeal from the judgment herein, 24 O. W. R. 224.

M. Lockhart Gordon, for third parties.

Shirley Denison, for the defendants.

W. M. Hall, for the plaintiff.

CARTWRIGHT, K.C., MASTER:—In this case after the judgment reported in 25 O. L. R. 492, an order was issued on the application of the defendants made on 4th March, 1912, for directions as to the trial of the third party issue.

This order though dated on 4th March was not really issued on that day. The entry made in my book is "order to go in usual form when settled by parties." This was apparently not done until 30th March which is the date of entry and of admission of service on solicitors of plaintiff and third parties.

The case came on for trial about a year later and the judgment then given is to be found in 24 O. W. R. 224.

From this judgment the third parties launched an appeal in the name of the defendants, who thereupon moved to quash the appeal on the ground that the order of 4th March, 1912, did not give any such right. The defendants' motion