

F. F. Treleaven, for the vendor.

C. E. Burkholder, for the purchaser.

BRITTON, J.:—I am of opinion that the vendor is entitled to the declaration.

Under Rule 74, the executor might properly be sued on behalf of or as representing the property or estate. This Rule is clear that in the case of executors or trustees the persons ultimately entitled need not be joined in foreclosure proceedings.

In *Re Roberts and Brooks*, 10 O.L.R. 395, in discussing the right of executors to sell, it was held that the question there was not under the Devolution of Estates Act, because by the will express power was given to the executor to sell the entire estate.

Here Julius Breterwitz was the absolute owner of the entire property. By his will he devised the land in question to his wife for life, and then used the following words: "I direct that after the death of my said wife my said executors shall sell said real estate as soon as they conveniently can, and divide the proceeds thereof equally among all of my children." There is an absolute power to sell. Under these circumstances, it is the same as if the property was devised to the executors with the usual power to sell and divide the proceeds. . . .

[The learned Judge then quoted the head-note in *Emerson v. Humphries*, 15 P.R. 84.]

*Declaration accordingly. No costs.*

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CARIQUE V. CATTS AND HILL—LENNOX, J.—FEB. 10.

*Fraud and Misrepresentation—Purchase of Interest in Invention—Contract—Rescission—Amendment of Pleadings—Damages.*—Judgment having been given on the 20th January, 1914, with leave to amend (see ante 785), the parties submitted amendments on the 4th February; and the learned Judge, after reserving judgment, allowed the amendments, and assessed the plaintiff's damages at \$6,000, for which sum he directed judgment to be entered for the plaintiff with costs, including the costs of a commission executed in New York. Counterclaim dismissed with costs. R. B. Henderson, for the plaintiff. H. D. Gamble, K.C., for the defendant Catts. W. E. Raney, K.C., for the defendant Hill.