

trusts, powers, provisoes, and declarations by and in the said hereinbefore in part recited indenture by way of marriage settlement declared and contained, of and concerning the hereditaments intended to be hereby conveyed;" and then follows a recital that the parties of the first part, at such request, have agreed to sell and absolutely dispose of the said lands to the party of the second part freed and discharged of and from the uses, etc., expressed in the marriage settlement; and the trustees then proceed, in exercise of their supposed power, to revoke and make void the uses, trusts, powers, provisoes, etc., in the marriage settlement declared and contained, and to convey the lands in fee simple to Forstner.

On the same day Forstner, in consideration of one dollar, conveyed the lands in question to Cummer and his wife as joint tenants in fee simple.

Mrs. Cummer died on the 30th December, 1895, without leaving children, and by her will constituted her husband sole devisee.

Mr. Cummer died on the 20th June, 1907, leaving a will disposing of the farm in question, and his executors entered into an agreement to sell the same to Mr. Farmer's client.

The questions for determination are: (1) whether, upon a proper interpretation of the marriage settlement, the infant children of Mr. and Mrs. Cummer took a vested estate upon birth which upon their death passed to the father and mother and to their half-brothers, sons of Mr. Cummer by a former marriage; or (2) whether, upon the death of Mrs. Cummer, no children surviving her, the estate went to Mr. Cummer for life with remainder to the right heirs respectively of Mr. and Mrs. Cummer; and (3) whether, in the events that have happened, the conveyance to Forstner abrogated the trusts of the marriage settlement, so far as they extend to such right heirs.

Counsel for the trustees and the Cummer estate raised the contentions covered by the first and third questions, and argued that *Lazier v. Robertson*, 30 O.R. 517, 27 A.R. 117, was conclusive in their favour upon the first question.

I think the language of the settlement in that case is so strikingly different from that used in this case as entirely to distinguish it from this case. In that case it is to be observed that the provision is that "after the several deceases of William and Jane to well and sufficiently convey and assure to the children issue of the said marriage the said lands," etc.; and the Court was of opinion that, although there was no time fixed by expression in the settlement declaring when the vesting should take