

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Boyd, C.]

[November 5.]

HERCHMER V. ELLIOTT.

Mistake—Fraud—Purchaser for value—Solicitor and client.

P. gave a mortgage on lands to J. H. Subsequently an assignment of this mortgage to K. E. purporting to be executed by P. was given to K. E. by P.'s solicitor, who was also the solicitor of K. E. J. H. brought this action to have this assignment delivered up to be cancelled as a cloud on her title and void.

The evidence showed that J. H., when she executed it, was told and believed that it was merely to provide for an extension of the term of payment of the mortgage from P.

Held, that J. H.'s signature having been obtained by a piece of deception which involved a fundamental error on her part, the assignment of the mortgage was void, even in the hands of an innocent holder.

Held, further, that the assignment being void, and no estate having therefore passed thereunder, there was no basis on which K. E. could found the defence which he set up of purchase for value.

Held, however, apart from this, that the circumstances under which K. E. obtained this assignment, viz., from the said solicitor, to secure some moneys due from the said solicitor to K. E. were such that K. E. had no reason to trust to any statement in the assignment that J. H. had been paid the mortgage moneys, and he was not constituted a purchaser of the assignment for value as against J. H.

The possession of the assignment of the mortgage apparently executed by J. H. did not authorize the solicitor to pledge it for a debt of his own, or justify the defendant K. E. in accepting it without the privity of the plaintiff.

Dickson, Q.C., for the plaintiff.

Cassels, Q.C., and *Skinner*, for the defendants.

Proudfoot, J.]

[November 9.]

DICKSON V. MONTEITH.

Mandamus—Surrogate judge—Grant of administration—Jurisdiction—R. S. O. c. 46, s. 31.

Mandamus directed to issue to compel the judge of the Surrogate Court of the County of Wellington, to grant administration with the will annexed of a certain testator to G. D., one of the next of kin (who had filed all necessary papers), notwithstanding that in an issue directed out of the said Surrogate Court a jury had found against the will. It appeared that the present applicant was no party to that issue, and that since the trial of it this court had held in favour of the will.

Held, also, that this was not a case for an appeal from the refusal to grant administration under the 31st section of the Surrogate Court Act, because an appeal under that section would appear to be granted only when some one contests the grant of administration, which no one was doing here.

Semble, that this court has jurisdiction to declare a will valid.

Moss, Q.C., and *Hoyle*s, for the motion.

J. MacLennan, Q.C., contra.

Ferguson, J.]

[November 11]

STEWART V. GOUGH.

Garnishee proceedings—Share under will—Receiver.

A testator left his real and personal property to the defendants as executors and trustees, on trust to sell and divide among his eight children, of whom S. S. was one. The testator died in May, 1883. On August 30th, 1883, J. S., one of the defendants, obtained judgment against S. S., and on September 15th, 1883, an attaching order was made thereon attaching all debts due and accruing due from the defendants to S. S., referring to his share under the said will. Afterwards, on October 3rd, 1883, J. S. recovered judgment against S. S., and on October 27th, 1883, J. W. S. was, by an order made without notice to the defendants, appointed receiver, and after his death the plaintiff was appointed receiver in his place. Notice of the making of these orders