

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

mortgage should be given came from McC. & Co., there was no pressure that induced the giving of the security—there was not a simple yielding to the proposal or importunity of the creditor.

*Held*, therefore, the plaintiffs were entitled to judgment.

*Held*, also, that the fact that the plaintiffs excluded McC. & Co. from the creditors on whose behalf they were suing was not a valid objection to the suit.

*Held*, further, that the fact that the plaintiffs were simple contract creditors only, and that the mortgagor had made an assignment for the benefit of creditors generally, and that the plaintiffs were not attacking the assignment as well as the mortgage, did not debar them from the relief claimed.

*Meriden Silver Co. v. Lee*, 2 O. R. 451 followed.

*Blake*, Q.C., and *Kerr*, Q.C., for the plaintiff.

*Osler*, Q.C., and *Bull*, for the defendants, other than Ferguson.

*Foster*, for the defendant, Ferguson.

Ferguson, J.]

[February 25.]

### FERRIS V. FERRIS.

*Ante-nuptial settlement—Trusts—Executory and executed—Rule in Shelley's case—Conveyance to husband and wife—Married Woman's Property Act of 1872.*

Action for construction of an ante-nuptial settlement. F., on the eve of his marriage, executed a settlement, dated January 4, 1876, wherein the intended marriage was recited, and F. agreed with his intended wife and K. to assign, transfer and set over to K., by good and sufficient conveyances, all such property as he might receive by will or otherwise from relatives, and a certain policy of insurance, to hold the same unto K. for the joint use and benefit of him, F. and his then intended wife, for and during the term of their joint lives, and from and after the decease of either of them to the use of the survivor of them during the term of his or her natural life, and from and after the decease of the survivor then to the use of the heirs of the plaintiff as he might by will direct: and then followed an agreement that articles of settlement should be executed

in pursuance of the document or settlement then signed and sealed by F.

The marriage took place on January 5, 1876; and by deed bearing date December 27, 1879, F. granted, in pursuance of the settlement, certain lands to K. and his heirs, upon trust, with the consent of F. and his wife or the survivor, to sell, lease or otherwise convey the same, and upon trust for K. to hold the moneys to arise from any such sale, and also the rents and profits of the premises, or of the unsold parts thereof, upon such trusts and subject to such powers as had been declared of the same respectively in the agreement or settlement of January 4, 1876, and upon trust to hold the moneys to arise upon any mortgage if made by K. to pay off and redeem any mortgage debt on the property, etc. F. and his wife occupied the premises till the death of the latter on November 20, 1884.

F. now brought this action, contending that the settlement was intended as a provision for his wife only, and that according to the true construction thereof, and of the deed of December 27, 1879, he was entitled to an estate in fee simple in the lands under the Rule in Shelley's case, or by way of resulting trust; and that the trusts of the settlement were exhausted, and he alone was now entitled to the land, and that K. should convey to him, which he refused to do on the ground that the infants were entitled to some interest in the lands under the limitations in the settlement.

*Held*, that the trusts of the settlement were executed and not executory; they were fully stated and declared; and the limitations on the face of the settlement must be construed in the same manner as similar legal limitations; and F. had an estate in fee simple under the Rule in Shelley's case.

It was not correct to say that, by reason of the transaction being after the Married Woman's Act of 1872, the husband and wife took as tenants in common for life, and that therefore the rule in Shelley's case could in any event only apply to an undivided moiety. The Married Woman's Act of 1872 has no such effect.

*Walker*, Q.C., for the plaintiff and trustee.  
*MacLennan*, Q.C., for the infant defendants.