

have the mortgage rectified and the judgment creditor restrained from levying upon and selling the said property,

Held, affirming the judgment of the Supreme Court of Nova Scotia, STRONG and PATTERSON, J., dissenting, that the parol agreement by D. to give a mortgage of the five-sixth parts of the said property was void against the registered judgment and the action could not be maintained. *Grindley v. Blaikie* (19 N.S. Rep. 27) approved and followed.

Appeal dismissed with costs.

Borden, Q.C., for the appellants.

Ross, Q.C., for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[Feb. 27.]

LANE v. DUNGANNON AGRICULTURAL ASSOCIATION.

Equitable assignment—Order for payment of money—Evidence of intention.

One who had contracted to erect a building for the defendants, during its progress gave to various persons orders upon the defendants for sums due them by him in the following form: "Dungannon, Sept. 12, 1890. To the directors of the Dungannon Driving Park Association: Please pay to D. M. the sum of \$—, and oblige. (Sgd.) T. F. H., contractor."

Held, per STREET, J., that these orders were not in themselves good equitable assignments of portions of the fund in the hands of the defendants.

Hall v. Prittie, 17 A.R. 306, followed.

The evidence, however, showed that there was only one fund out of which the directors could be expected to pay the orders; that the nature of that fund and its origin were well known to all the parties; that when the contractor promised the persons with whom he dealt orders upon the directors, he meant to give, and these persons expected to get, orders which were to be paid out of the contract price; and that the directors understood the orders as in-

tended to deal with portions of the contract price, and to be payable only out of that particular fund.

Held, per STREET, J., that the court should look to the real intention of all parties to the transaction and give effect to it by declaring that the contractor did make an equitable assignment to each of the order-holders of a portion of the fund.

ARMOUR, C.J., agreed in the result, but on different grounds.

Hoyle, Q.C., for the plaintiff.

Garrow, Q.C., for the order-holders.

W. H. Blake for the other creditors.

TOLTON v. CANADIAN PACIFIC R. W. CO.

Watercourse—Diversion of, by railway company—Equitable easement—Bond fide purchaser for value—Registered deed—Actual notice—Prescriptive right—Damages—51 Vict., c. 29, s. 90, s-s. h (D.)—Compensation.

Where the defendants in 1871, without authority, diverted a watercourse on certain land and afterwards made compensation therefor to the then owner of the land, the plaintiff's predecessor in title,

Held, that the equitable easement thereby created in favour of the defendants was not valid against the registered deed of the plaintiff, a bond fide purchaser for value without actual notice, the defendants having shown no prescriptive right to divert the watercourse; and the diversion was wrongful as against the plaintiff.

Knapp v. Great Western R. W. Co., 6 C.P. 187; *L'Esperance v. Great Western R. W. Co.*, 14 U.C.R. 173; *Wallace v. Grand Trunk R. W. Co.*, 16 U.C.R. 551; and *Partridge v. Great Western R. W. Co.*, 8 C.P. 97, distinguished.

The plaintiff, having failed to prove actual damage, was allowed nominal damages for the wrong; and instead of granting a mandatory injunction to compel the restoration of the watercourse, the court directed a reference to ascertain the compensation to which the plaintiff would be entitled as upon an authorized diversion of the watercourse under 51 Vict., c. 29, s. 90, s-s. h (D.).

Elgin Meyers for the plaintiff.

G. T. Blackstock and Angus MacMurphy for defendants.