

The motion was heard in the Weekly Court, Toronto.

J. C. McRuer, for the vendor.

E. F. Singer, for the purchaser.

E. C. Cattnach, for the Official Guardian, representing the infant children of the vendor and his heirs as a class unascertained.

ORDE, J., in a written judgment, said that the vendor, on the 30th September, 1918, drew up in his own hand and executed a conveyance, in pursuance of the Short Forms of Conveyances Act, of the lands in question, in favour of one Martha H. Laurie, an unmarried woman, who was then acting as his housekeeper. In the description of the parties, she was described as the "grantee herein," and these words were followed by the words "in trust." The consideration was stated to be "natural affection and the sum of one dollar," and the grant was expressed to be "unto the said grantee in fee simple in trust for the heirs of the said grantor." There was no habendum, that is, the printed habendum in the form used was struck out. The clause which contained the general release of "all claims upon the said lands" was followed by the words "to and for the exclusive benefit of his heirs as aforesaid." The deed was registered on the 8th November, 1918. Martha H. Laurie swore that she knew nothing of the deed until some time after its registration. She understood that she held the property in trust for Brown, and she never attempted to exercise any authority over it, no rent was ever paid to her, and she never visited it, or interfered with it in any way. Subsequently, on the 10th May, 1920, she executed a reconveyance to Brown.

Brown swore that when he executed the deed he was ill and under severe mental strain; that he made the conveyance without knowing its effect; that he intended to turn over the property to Martha H. Laurie in trust for himself and with no other intention. He had no advice that the trust was irrevocable, and believed it might be revoked by his will. There was no consideration for the conveyance, and he never parted with the possession of the property.

Brown had now entered into a contract to sell the lands, and objection was made to his title by reason of the conveyance to Martha H. Laurie. Brown contended that the voluntary settlement which he had made was revocable, and numerous authorities were cited in support of the contention that, in the circumstances in which the settlement was executed, it could be revoked. But the authorities are equally clear that it is not every voluntary settlement which may be revoked; and, while there are certain principles upon which the Courts act in determining whether or not the settlor can revoke the settlement, each case must be determined upon its own facts.