

## Chancery Division.

Rose, J.]

[Nov. 24, 1887.]

WHALLS v. LEARN *et al.*

*Infancy—Exchange of lands by infant—Compromise of proceedings for benefit of infant the result of which was that she could not make restitution—Circumstances under which court will refuse to aid infant.*

M. J. W., the plaintiff, being an infant married woman, borrowed money from the defendant G. on a mortgage of fifty acres of land owned by her, and with that money purchased ten acres of land, which was subject to a mortgage. She then made an exchange with the defendants L. and G., by which she conveyed to them her equity of redemption in the fifty acres in consideration of a release of the covenants of her and her husband in the mortgage, and a conveyance of three acres from L., which three acres were also subject to a mortgage. The mortgages on the ten acres and on the three acres having both come into the hands of one S. He made her a further advance, and a new mortgage was made to him for the whole amount, and the old mortgages discharged. S. then discovered that M. J. W. was under age, and took proceedings to have the discharges cancelled, and the old mortgages reinstated, in which proceedings the official guardian intervened on behalf of M. J. W. as an infant. The result of this was a compromise in the interest of the infant, and afterwards with the approval of the guardian, M. J. W. and her husband being unable to redeem, an order was granted vesting the equity of redemption in S. on the payment of \$100, which was paid.

In an action to set aside the deed of the fifty acres, on the ground of infancy, it was

*Held*, following *McDougall v. Bell*, 10 Gr. 283, that although the suit in which the compromise was made, was not instituted by the infant, yet as the compromise was at her instance and for her benefit, and as she was not in a position to restore the defendants to their original position, she could not succeed.

*Ermatinger, Q.C.*, for the plaintiff.

*J. M. Glenn*, for the defendants.

Full Court.]

[Mar. 1.]

WHALLS v. LEARN *et al.*

*Married Woman—Infancy—Double disability—Seeking to avoid conveyance, must make restitution—Laches—Short delay.*

The facts appear from the preceding note of this case.

*Held*, (reversing ROSE, J.) that the plaintiff should be allowed to recover back the fifty acres on payment of the mortgage money obtained from G. and interest, and the value of the three acres which she received as the consideration of the conveyance of the fifty acres, and that the short delay of two months and thirteen days should not, without more, bar the plaintiff.

*Per* BOYD, C.—By the law, the disability attaching to a *femme covert*, who is an infant, is not removed, so far as the infancy is concerned; in that respect both sexes are alike incompetent. But apart from infancy, she may deal with her land as a *femme sole*. The effect of the legislation is to give to the conveyances of married women (who are infants) the same characteristics as are by law attributed to the conveyances of male infants, *i.e.* if such deeds are of benefit to the infant, or operate to pass an estate or interest they are regarded as voidable only, and not mere nullities. The plaintiff cannot have the aid of the court without making complete restoration to the defendants of the specific or equivalent value of that which she received from them during nonage.

*F. E. Hodgins*, for the plaintiff.

*J. M. Glenn*, for the defendants.

Boyd, C.]

[Feb. 14.]

REINHART v. SHUTT.

*Mechanics' lien—Mortgage—Prior or subsequent incumbrances.*

The plaintiff worked on a barn of defendant's up to August 9, 1887, and did some further work on October 25 following. The defendant mortgaged his land to A. S., by mortgage dated October 21st, and registered October 24th. The plaintiff registered his lien October 25th, and having brought his action against defendant only, obtained the usual judgment;