

the amount paid, \$3,895, the plaintiff would be entitled to recover \$3,320, with interest at five per cent. from the 30th July, 1911.

The question of costs has occasioned me some difficulty. The conclusion at which I have arrived, is, that no costs shall be awarded to either party.

HON. MR. JUSTICE KELLY.

DECEMBER 28TH, 1912.

DEEVY v. DEEVY.

4 O. W. N. 555.

Deed—Action to Set Aside—Forgery—Evidence.

KELLY, J., dismissed action to set aside a deed from plaintiffs to their deceased son, on the ground that it was a forgery, holding that all the evidence tended to shew the unreliability of plaintiff's claim.

T. D'A. McGee, for the plaintiffs.

F. A. Magee, for the defendant.

HON. MR. JUSTICE KELLY:—The plaintiffs are the father and mother of W. J. Deevy, who died on August 16th, 1912, at the age of twenty-six years.

The defendant is the widow and sole devisee of W. J. Deevy, and the sole executrix of his will.

What plaintiffs ask is judgment setting aside as fraudulent a deed, dated September 21st, 1909, from them to their son, W. J. Deevy, of lot 1, on the east side of Concord street, as shewn on plan of sub-division of part of lot lettered F., concession D., Rideau Front, of the township of Nepean, now in the city of Ottawa, which plan is dated 17th November, 1872, and is registered; and cancelling the registration of that deed; and a declaration that these lands are the property of the plaintiffs, and not of their deceased son, his heirs and assigns.

To establish their claim, the plaintiffs set up that the deed mentioned was not signed by them or with their authority, and, in effect, that what appears to be their signatures thereto are forgeries.

The affidavit of execution of the deed by the plaintiffs was made by Henry Purdy, on September 24th, 1909, before Charles L. Bray, a commissioner. Henry Purdy is the father of the plaintiff, Martha Deevy, and is now eighty-five years of age.