

On December 22nd, the defendant completed his purchase, and, having paid off the said two incumbrances, requested discharges thereof, with his deed of purchase, but as he did not make a further search, he did not discover the plaintiff's lien.

Held (affirming the decision of FALCONBRIDGE, J.), that the defendant was entitled to stand in the place of the incumbrancers, whom he had paid off, and to priority over the plaintiff's lien.

The defendant did not mean to give priority to the plaintiff's lien, of which he knew nothing in fact. The Registry Act, which declares (s. 80) that registration shall constitute notice, does not preclude enquiry as to whether there was knowledge in fact; and the Court was not compelled as a conclusion of law to say that the defendant had notice of what he was doing, and so could not plead mistake.

Langton, Q.C., for the motion.

Moss, Q.C., and *McKay*, contra.

Full Court.]

[June 30.]

KEYES v. KIRKPATRICK.

Reference—Action by creditor obtaining leave under R.S.O., 1889, c. 124, s. 7, s-s. 2—Com. promise arrived at by assignee.

This was an action to set aside a bill of sale brought by a creditor, in the name of an assignee for creditors, the plaintiff having obtained an order under R.S.O., c. 124, s. 7, s-s. 2, enabling him to bring the action, the assignee being willing to bring it.

It appears that after service of the notice of motion for the order giving permission to bring the action, but before the order, the assignee believing that he had authority to do so, and with the approval of the inspectors, made a settlement with the defendants, in whose favor the bill of sale had been made, which settlement also it appeared was advantageous to the estate.

Held, that the settlement arrived at must be held good, and the judgment dismissing the action should be affirmed.

DuVernet for the plaintiff.

W. Cassels, Q.C., for the defendant.

Full Court.]

[June 30.]

STRAUGHAN v. SMITH.

Seduction—Action by brother—loss of service—Infant defendant—Non-appointment of guardian—Cons. R. 261. 313.

In an action for seduction, it appeared that the plaintiff was the brother of the girl seduced; and that the girl, though in the service of another lady, yet (by agreement with her mistress entered into at the time of her engagement), was at liberty to perform, and did perform certain services at home for the plaintiff.

Held, that the plaintiff was entitled to maintain the action.

It also appeared that the defendant was not quite of age, and that no guardian had ever been appointed, but that the fact of infancy was well known to the defendant's parents, and to the solicitor and counsel who appeared for him at the trial, and no objection on this ground was taken till this motion before the Divisional Court.

Held, that under Rules 261 and 313, the appointment of a guardian was not imperative; the Court had a discretion, and in this case refused to interfere with the judgment obtained against the defendant at the trial.

Bruce, Q.C., for the defendant.

Carscallen, Q.C., for the plaintiff.

Full Court.]

[June 30.]

MARTIN v. MAGEE.

Vendor and purchaser—Devolution of Estates' Act—Devisee of land—Payment of debts—Beneficial interest.

Held, that where one dies, since the Devolution of Estates' Act, leaving a will, devising lands, the lands devolve upon the executors of the deceased as assets for the payment of debts; when these are paid (or there being no debts), the executors will hold the bare legal estate for the devisee of the land. In other words, subject to the payment of debts, the beneficial interest in the land passes to the devisee, and she can make title as the real owner. If the payment of the debts will exhaust the land and other assets, there is no beneficial interest, but if the debts fall short of this in amount, the matter is in practically the same condition as with regard to any other incumbrance, i.e., upon the charge or incumbrance being satisfied (which can be done out of the purchase money), the clear title can be conveyed.

E. D. Armour and *D. Macdonald* for the plaintiff.

Hoyles, Q.C., and *Chisholm*, for the defendant.