

give it is presumed against the husband: R. S. O. ch. 147, sec. 2, sub-sec. 3. . . The evidence is not satisfactory of the existence of an antecedent agreement to give the mortgage, and on all the facts the husband has failed to rebut the presumption. Judgment for plaintiffs setting aside the mortgage, with costs.

Gibson, Osborne, O'Reilly, & Levy, Hamilton, solicitors for plaintiffs.

G. F. Peterson, St. Catharines, solicitor for defendant Loretta J. Dawson.

J. E. Varley, St. Catharines, solicitor for defendant George Dawson.

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MEREDITH, C.J.

JANUARY 8TH, 1902.

TRIAL.

MUNRO v. TORONTO RAILWAY CO.

*Infant—Lease by — Repudiation — Partition — Amendment — Parties.*

Action tried at Toronto, brought to have declared void a lease by plaintiff and two others to defendants, for ten years from 1st April, 1896, of Munro Park, east of Toronto, in the township of York. On 10th August, 1900, plaintiff became 21 years of age, and at once repudiated the lease. The property was then fairly divided among the three lessors, and plaintiff brought this action, asking for a confirmation of the partition already made or for an order for another one and for possession of his portion.

C. Millar, for plaintiff.

J. Bicknell, for defendants.

MEREDITH, C.J.—The partition already made is not binding on defendants. They were not parties to it, and are not bound by it, even if fairly and equitably made, which, if their interests under the lease are to be affected by it, I think it was not: *Cornish v. Gest*, 2 Cox 27; *Willis v. Slade*, 6 Ves. 498; *Baring v. Nash*, 1 V. & B. 351. It would not be proper to allow plaintiff to amend at trial, and, making defendants parties, proceed. The proper course is to postpone the trial and give plaintiff leave to amend, adding his co-lessors as parties and otherwise as advised; and to defendants to amend as advised.

All costs to be disposed of by the Judge who tries the case on the amended pleadings. Leave to plaintiff, if he does not wish to amend as indicated, to speak to the case.

Millar, Ferguson, & Hughes, Toronto, solicitors for plaintiff.

J. Bicknell, Toronto, solicitor for defendants.