

HON. SIR JOHN BOYD, C.

SEPTEMBER 18TH, 1913.

GOLDSMITH v. HARNDEN.

5 O. W. N. 42.

Will—Power of Appointment—Exercise of—Validity—Subsequent Attempted Exercise of Power—Revocation—Title to Land—Action for Possession.

BOYD, C., *held*, that an appointment made voluntarily and without the knowledge of the appointee was valid even against a subsequent appointee although the appointment was made for valuable consideration.

Sweet v. Platt (1886), 12 O. R. 229, discussed.

Action to recover possession of land, tried at Belleville. The facts in the case go back over more than half a century.

In 1846 the late John Platt, a prosperous merchant of Warkworth, made his will appointing the late Thos. Scott of Cobourg, and Adam Henry Meyers of Trenton, his executors. After disposing of other interests, the will purported to give a farm of 100 acres in the township of Cramahe, now Brighton, to his brother the late Daniel Platt, for life; then to the late Homer Platt for life; then to such of Homer Platt's offspring as Homer Platt should appoint and should survive Homer Platt.

The wording of the will was such that it left it open to the contention that Homer Platt took an estate tail instead of an estate for life, and he mortgaged the farm in fee to the late John Eyre, barrister, of Brighton, and afterwards sold the equity of redemption. Homer Platt then, on the assumption that he only had an estate for life, appointed the farm in fee to his daughter Luella Sweet who mortgaged it to the late E. B. Stone, barrister, of Peterboro, and who assigned it to Senator Cox.

Luella Sweet afterwards sold and conveyed the farm in fee simple to the late Dr. Goldsmith then practising in Peterboro, who conveyed to his wife, the plaintiff. After all this in 1900, Homer Platt purported to revoke the appointment to his daughter Luella Sweet, and made a new appointment to two daughters, Mrs. Harnden of Warkworth, and Mrs. Dr. Raulston of New York, for the consideration of \$500.

In the case of *Sweet v. Platt* (1886), 12 O. R. 229, the late Sir Chas. Moss, acting for Eyre, contended that Homer Platt had an estate in tail, and could convey to Eyre, but