though, if the obstruction was continued thereafter, vindictive damages might be recovered to compel the removal of same; that if the defendants desired to prevent the bringing of fresh actions the matter should be put in train for assessment of damages.

Held, therefore, that the damages here were not properly assessed; and a new trial was directed.

Semble, that the damages for injury to the reversion belong to the vendor, and leave was given to add him as a party plaintiff.

Robb for the plaintiff.

E. D. Armour for the defendants.

Div'l Ct.] [Dec. 21, 1889.

FREEMAN *v.* FREEMAN.

Will—Validity of—Mental and physical capacity of testator—Donatio mortis causa, sufficiency of.

F., who owned a valuable farm in this Province, on which he and his family lived, raised $705 by mortgage on it, and went to the United States to obtain medical advice, as he was suffering from headache and tumour in the throat, which incapacitated him from work; and resided there with a married daughter till his death. In October a son, N., who had been living in the United States for a number of years, came to see him, and went with him to an attorney to have his will drawn, whereby his property was to be left to defendant and N., but on the attorney's ascertaining the existence of his wife and other children, persuaded him not to draw it up then. On the 8th November they again went to the attorney's, where a deed was executed by F. to N., for the express consideration of $705 and to assume the mortgage, but no money was paid, and it apparently was an arrangement to enable the son to sell the property for F., but as F.'s wife, who was named as a party, refused to execute, the matter fell through. Nothing was said at this time about the will. In December, while F. was very ill in bed, the attorney, at the request of the defendant's husband, attended to draw F.'s will, which the husband said was to be in the defendant's favor. F. was asked by the attorney if he wished his will drawn, when he nodded his head, and a will was then drawn up as the husband had instructed, which was read over to F. when, as the attorney said, F. informed him he wished N. included in it, and a new will was drawn up, devising his whole property to defendant and N., and read over to F., who, the attorney stated, said it was all right. He was then lifted up in a sitting position, but on his appearing to write with difficulty, he was asked by the attorney whether he wanted assistance, when he nodded his head, whereupon the attorney took the top of the pen and guided his hand, and the signature was written in that way. The attorney and the doctor in attendance both said they considered he had sufficient mental capacity to make a will. He was, however, very weak, both physically and mentally, and it was questionable whether he understood the purport of the will, namely, that he was devising away all his property; his understanding, if he had any, was that he was merely disposing of a sum of $500 on deposit in a bank. On the day previous, F. had requested defendant to get him the deposit receipt, when he gave it to her, telling her he wanted her to take care of him, and after payment of his debts and funeral expenses, to divide the balance between defendant and N., and that he was going to make a will. The receipt was changed to her name in the bank, and the amount deposited to her credit, which she subsequently used.

Held, that under the circumstances, the will could not be supported, but that there was a good *donatio mortis causa* of the $500.

Moss, Q.C., and *White* for the defendant.

M. Wilson for the plaintiff.

Div'l Ct.] [March 8.

BARBER *et al.* v. MCKAY *et al.*

Registration of subsequent deed — Priority — Proof of valuable consideration.

Registration of subsequent deed will not give priority over another deed prior in point of time from the same grantor, unless a valuable consideration is proved.

Bain, Q.C., for the appeal.

W. T. Allan contra.

ROBERTSON, J.] [Feb. 8.

RE BUSH.

Executor and trustee—Removal of— Trustee Act, 1850—Practice.

Where there is anything to be done under a will appointing an executor, which comes within the province of the executorship, there is no