

ways. The committee looked upon the estate as hopelessly insolvent, and regarded themselves as mortgagees in possession. On the passing of the accounts the referee disallowed all payments made by the committee other than for taxes, insurance premiums, interest on mortgages, and minor repairs, and also refused to allow them remuneration for their services, and refused them their costs of accounting, and so reported:—Held, by Meredith, C.J.C.P., on appeal, directing a reference back, that the defendants should be allowed for the expenditure upon the estate, if, upon the facts as found, a case should be made which would have been sufficient to have obtained an order permitting the expenditure to be made, had an application been made to the Court for authority to incur it; that the fact that the committee did not pass their accounts annually was not alone sufficient ground for charging them with sums with which they would not otherwise have been chargeable, or for disallowing sums which they would have been otherwise entitled to have allowed to them; and that the order on appeal should not prejudice the right of the defendants to claim that they were not to be chargeable as committee, but as mortgagees in possession. This order was affirmed by a Divisional Court. Semble, per Boyd, C., that, had there been no question to go back to the referee as to allowance for improvements, his ruling as to the costs of accounting should not have been disturbed; the onus was still on the committee to satisfy the referee that costs should be given and other allowances made, and how far given and made, notwithstanding the disregard of the order directing an annual passing of accounts.

Re Breen, 18 O.L.R. 447.

— Improvident contract — Voluntary gift — Insanity of grantor. — William Davidson died in 1890, leaving real estate consisting of a homestead and lot "A," all of which he left absolutely to his wife Helen Davidson, and appointed her and the defendant William Ferguson executors. In 1898 James Davidson, son of William and Helen Davidson, being indebted to the defendants William Ferguson and Philip Arsenault, became insolvent and assigned to Philip Arsenault. Nearly all the creditors, including William Ferguson and Philip Arsenault, agreed to compromise at ten cents on the dollar, but James Davidson made a secret agreement with William Ferguson and Philip Arsenault that they should be paid in full. By arrangement between James Davidson, William Ferguson and Philip Arsenault, William Ferguson for James Davidson purchased the assets from Philip Arsenault as assignee for \$1,000.00, and for the securing William Ferguson the balance advanced and balance of his old debt against James Davidson, Helen Davidson in 1899, being then about seventy-six

years of age, without any independent advice, executed to William Ferguson a mortgage of lot "A" for \$822.90. William Ferguson gave James Davidson a power of attorney to deal with these assets, who in the name of William Ferguson sold and converted them into money to an amount greater than the mortgage. In December, 1899, James Davidson arranged that his mother should sell to Philip Arsenault the said lot "A" for \$600, \$200 of it to go on Philip Arsenault's old account against James Davidson, and \$400 by notes made by Philip Arsenault in favour of William Ferguson, and which the latter took on his account against James Davidson. Both the mortgage and deed were written by James Davidson, and Helen Davidson had no independent advice and had become of feeble intellect. In March, 1900, Helen Davidson made a will leaving all her property to her son James and his family. William Ferguson drew this will, is named in it an executor, and had full knowledge of its contents. In December, 1902, James Davidson being indebted to William Ferguson to the amount of \$1,250.97, Helen Davidson, at the request of William Ferguson and James Davidson, gave a mortgage of the homestead to William Ferguson for \$1,250.97 to secure that amount, which was shown by the evidence to be the total sum due from James Davidson to William Ferguson at that time. Helen Davidson lived practically all the time with James Davidson, and he had great influence over her, with fact was well known to both William Ferguson and Philip Arsenault:—Held, that the first mortgage to Ferguson, made in March, 1899, was discharged and must be set aside, as the amount which it had been given to secure had been paid in full. Held, that the conveyance to Arsenault, made in December, 1899, must be set aside, as obtained through undue influence and pressure on the part of James Davidson, and solely for his benefit; and on the ground of the mental weakness of the grantor, and that she had no independent advice; that Arsenault, as he knew the relation which James Davidson occupied with regard to the grantor, and all the circumstances in connection with the transaction, stood in no better position than James Davidson would stand, and was bound by, and responsible for, any acts committed by Davidson, or omitted to be done by him. Held, that the second mortgage to Ferguson, made in December, 1902, must be set aside, as obtained through undue influence and pressure on the part of James Davidson and William Ferguson, and solely for their own benefit; that Ferguson had the same knowledge of all the facts as Arsenault, and was bound in the same way by the acts and omission of James Davidson; that the grantor had no independent advice, and was so deranged mentally as to be incapable of transacting business.

McGaffigan v. Ferguson, 4 N.B. Eq. 12.

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