

Ct. of Ap.]

NOTES OF CASES.

[Ct. of Ap.

Spragge, C.]

[March, 24.]

LAVIN V. LAVIN.

Voluntary conveyance—Undue influence—Independent advice.

A conveyance of land from a man ninety years old to his son, was prepared on the instruction of the son. The deed recited that the grantee had agreed to pay his son \$10 a month for his life, but no such agreement was in fact proved, and there was not any other consideration. It was shown that the deed had not been explained to the father, and the clerk who witnessed the execution of the conveyance could not say that he had read it over to him. There was not any direct fraud established, but the father was under the influence of the son, and had acted without advice.

Held, affirming the decision of the Court below, as reported, 27 Gr. 567, that under these circumstances the deed should be set aside.

O'Donohue and Haverson, for appeal.

J. H. Macdonald, contra.

From C. C. Oxford.]

[March 24.]

WILSON V. BROWN AND WELLS.

Remission to County Court for amendment—Discretion as to amending.

This Court having been of opinion that the record should be amended, remitted the cause to the Court below in order that the record might be so amended and a verdict entered for the plaintiff against B. alone (6 App. R. 411). The judge of the County Court, instead of entering such a verdict, ordered a new trial between the parties, who were to be at liberty to amend as they might be advised, so that B. might raise any defence which it was not considered necessary to raise in the action on the joint liability.

Held, that the direction of the County Court Judge as to the way he thought it right that the application to amend should be made was an exercise of his discretion with which this Court would not interfere.

McCarthy, Q. C., for the appeal.

Falconbridge, contra.

From Proudfoot, V.C.]

[March 24.]

DAVIDSON V. MAGUIRE.

Post nuptial settlement—Valuable consideration—Insolvency.

A marriage having been agreed upon between M. and the defendant, the father of the latter

agreed to convey a lot to her as her marriage portion, if M. would erect a home upon it, which he intended building on land of his own. M. agreed to this proposal, and the marriage took place. During the following year M. put up a dwelling on the land of his father-in-law which was thereupon conveyed to the defendant; and two years afterwards M. became insolvent.

Held, affirming the judgment of the Court below, that the erection of the house by M. was the consideration for the conveyance of the land, and that the transaction could not be treated as a voluntary settlement; and there being no fraud in M. building in the manner stated, the dealings between them could not be impeached.

Bruce, for appellant.

Bethune, Q. C., contra.

From Q. B.]

[March 24.]

NEILL V. UNION MUTUAL LIFE INS. CO.

Life assurance—Unpaid premium.

One of the stipulations of a life policy was that, if any of the premiums should not be paid at the time limited therefor, the consideration of the contract between the Co. and the assured should be deemed to have failed, and the Co. to be released from liability thereunder. Another stipulation provided that, if an overdue premium was received, it would be upon the express understanding and condition that the party was in good health, and if the fact were otherwise, the policy should not be put in force by the receipt of the money. A check had been given for a quarterly premium, with a request to hold it for a short time as there were then no funds. Subsequently it was presented on several occasions, but without being paid. On the 21st of October funds were provided, but as it was after banking hours before the agent was informed of the fact the cheque was not presented, and the receipt had been returned by the agent. That night the assured was killed.

Held, affirming the judgment of the Court below (45 U. C. R. 593), that the policy lapsed the day after the premium became due; that payment alone could then revive it, and the facts did not establish payment or anything dispensing with it.

S. H. Blake, Q. C. and *G. H. Watson*, for plaintiff.

C. Robinson, Q. C. and *Mulock*, contra.