

husband sold the lands and absconded, leaving his wife behind.

The defendant, on learning this, went to the wife in a state of excitement, threatened to aid in proceedings criminal as well as civil unless he obtained security, and urged her to procure her mother to give security on a piece of land belonging to the latter.

This, the mother, after persuasion by the daughter, agreed to give, the defendant advising that plaintiff's legal adviser should not be consulted, and on the evening of the following day, a deed absolute in form, was executed by both the mother and daughter, the latter having dower in the land, in favor of the defendant, who, at the mother's request gave a separate memorandum of defeazance. There had been no direct communication between the defendant and the mother; nor were there any threats made or undue influence apparent at the time of execution of the deed, both grantors being aware that they were giving security.

In an action impeaching this deed as having been obtained by threats and undue influence, the trial judge [ARMOUR, C. J.] dismissed the action with costs, which judgment was set aside by the Divisional Court of the Common Pleas Division.

On appeal to this Court, the judgment of the C. P. D. was reversed, and the judgment of this trial Judge restored with costs.

W. H. Bowlby, for the appellant.

C. A. Durand, for respondents.

[March 6, 1888.]

RYAN v. COOLEY.

Will, construction of—Vested interest—Contingent interest—Maintenance.

The testator made a residuary devise of real estate to his executors, in trust for his four children, "until they, or the survivor or survivors of them, shall have attained the age of twenty-one years, said real estate to be divided amongst the said four children, share and share alike, and in case any of them shall have died, leaving issue, the said issue shall take the share which otherwise would have gone to his, her or their parent." The will also directed the said four children should be maintained and educated out of the income

of such property during their minority, and the surplus to be invested during such their minority, and upon the youngest, or the survivor or survivors of them, attaining twenty-one, to divide the personal estate, share and share alike. And upon any of the children attaining twenty-one, the executors were directed to advance such sum as might be necessary to establish such child in business, etc. And all the residue of his personal estate was to be held by his executors and divided at the same time as the lands.

Held, (1) [affirming the judgment of the Court below], that one of the sons who had attained twenty-one, was not entitled to maintenance out of the estate.

Held, (2) [varying the same judgment] that the four children took vested and not contingent interests in the residuary real and personal estates, the interest in the real estate being liable to be defeated as to any one or more of them, upon the condition subsequent of death before partition leaving issue, in which event the share of the deceased would go over to the issue.

Clute, for the appellant.

J. K. Kerr, Q.C., for infant devisees.

Lush, Q. C., for future heirs.

DOMINION SAVINGS & INVESTMENT COMPANY
v. KILROY.

*Married Women's Act—R. S. O. 187, c. 125,
ss. 5-7—Wife's separate property.*

A married woman carried on business in her own name, the business being managed for her by her husband. For the purpose of the business she purchased the goods constituting her stock in trade and which the vendor sold to her upon her credit exclusively, and not to her husband.

Held, that even though the business might not be the business of the wife, carried on by her separately from her husband, within the meaning of section 7, so as to protect the earnings from the husband's creditors, the goods so sold to the wife were her own property, under section 5 of the Act, and were not liable to be taken in execution at the suit of the husband's creditors.

Quære, Whether this would be so with regard