to be divided among their children as they may see fit." C., the wife, died, and after her death B. conveyed to one of his children, D. B. and D. then mortgaged to the company, and the company sold to E. under the power of sale in the mortgage, but E. refused to take the company's title.

Held, that B. and C. took an estate for life only, that the appointment in favour of one child to the exclusion of the rest was not a valid appointment, and that the title offered was not one that the purchaser could be compelled to accept.

S. H. Blake, Q.C., for the vendors.

Robert Armour, for the purchaser.

Proudfoot, J.] November 22.

MCMULLEN v. POLLEY.

Principal and agent—Solicitor and client—Right of solicitor to receive money for client.

M., a solicitor, on the pretence of obtaining an advance of $6,200 for the plaintiff on mortgage of the plaintiff's lands procured the plaintiff and his wife to execute a mortgage for that smount. P., the mortgagee, actually paid the money to M., and got from him a mortgage and had it registered, but M. absconded without paying over the money to the plaintiff, who now sued the defendant for the said sum of money, or in the alternative, a release of the mortgage, and reconveyance of the lands.

Held, that the mortgage being left in the hands of M. did not prove that he was an agent of the plaintiff to receive the money from the defendant, and since the plaintiff denied having given M. any authority to receive the money, and the defendant had not proved the agency of M. to receive the money (the onus of proving which rested on him), therefore the plaintiff was entitled to judgment, with costs.

Walkem, Q.C., and *McIntyre*, Q.C., for the plaintiff.

Britton, Q.C., and *Whiting*, for the defendant.

Boyd, C.] [November 24.

BERRIE v. WOODS.

Landlord and tenant—Covenant running with land—Covenant to pay for permanent improvements at termination of lease.

J. B. demised certain lands to the defendant for ten years by deed of lease, which lease contained the following clause: "At the expiration of the lease the lessor, his heirs and assigns will pay or cause to be paid to the said lessee, etc., one half of the then value of any permanent improvements he may place upon the said lands; provided, however, if the said lessor, his heirs and assigns, at the expiry of the term, grant a new lease for a further period of five years, said improvements shall belong to said lessor, his heirs or assigns." Pending the term of ten years, J. B. conveyed the lands to the plaintiffs in fee as tenants in common, who at the expiration of the said term demanded possession from the defendant, who thereupon made a claim in respect to improvements under the above clause in the lease.

Held, that the liability to pay for the improvements ran with the land and attached as an equitable lien thereon against the plaintiffs. Judgment given that possession was to be delivered forthwith to the plaintiff, subject to a lien on the property for the value of the defendant's improvements under the terms of the lease. Lien to attach on the title which J. B. had prior to the deed to the plaintiff. Reference to the master to fix value of improvements.

Moss, Q.C., and *Meek*, for the plaintiff.

Millar, for the defendant.

Boyd, C.] [November 29.

RE LEGARIE ET AL. v. THE CANADA LOAN AND BANKING CO.

Division Court—Prohibition—Equitable claim—Surplus in hands of mortgagee.

Held, that a Division Court had jurisdiction to entertain a claim for less than $100 made by a mortgagor upon the surplus proceeds of a mortgage sale which realized less than $400. Such a claim is an equitable cause of action for money had and received.

Washington, for the defendants.

C. J. Holman, for the plaintiffs.