CHANCERY DIVISION.

Boyd, C.] [June 3.

SWEET ET AL. v. PLATT ET AL.

Will—Devise—Limitation to offspring—Life estate of ancestor—Misrepresentation—Execution of deed without consideration.

J. P. by his will provided as follows: "I give and devise to my brother D. P. the . . on which he resides . . to hold the same to the said D. P. for and during his natural life, and after the death of the said D. P. I give and devise the said . to H. P., second son of said D. P. to be held by the said H. P. for and during his natural life, and if the said H. P. shall leave offspring him surviving then I give and devise the same to such of his offspring as the said H. P. shall appoint and in case of no appointment being made by the said H. P. in his lifetime, then I devise the same equally to the children of the said H. P. in fee, and in case the said H. P. shall die without lawful offspring or during his father's lifetime, then I give and devise the same to . . ." D. P. and H. P., by conveyances and mortgages, dealt with the land as if they were the owners in fee. After several mortgages to one J. E., who was H. P.'s solicitor, were registered against it, and after D. P.'s death, J. E., having assured H. P. that his (J. E.'s) title to the land was perfectly good, and that H. P.'s children had no interest in it, persuaded H. P., as a matter of form, to execute the power of appointment in favour of L. S., one of his children, and to obtain from L. S. and her husband, without their knowing of the execution of the power of appointment, and on making the same representation and without consideration, a quit claim deed of all their interest in the land. In an action by L. S. and her husband, on discovering their interest, to have the quit claim deed delivered up to be cancelled, and to have it declared that the conveyances and mortgages made by D. P. and H. P. only bound their life estates, it was

Held, that only a life estate was given to H. P. and not an estate in fee tail. If "offspring" is read as "children," or construed as meaning "issue," the devise falls within the rule that where words of distribution, together with words which would carry an estate in fee, are attached to the gift to the issue, their ancestor takes for life only. Here to the children or issue, in default of appointment, is given expressly an estate "*in fee*," and it is distributed to them "*equally*."

Held, also, that untrue representations were made which induced the execution of the power of appointment, and the transfer of the estate thereunder without consideration, and that the instruments subsequent to the deed of appointment did not affect the fee simple of the land, and that the operation of the mortgages should be limited to the life estate of H. P. in the land.

Foster, Q.C., and *Clark*, for plaintiffs.

Moss, Q.C., for the defendants the executors.

Edmunston, for Catharine E. Platt.

Boyd, C.] [June 5.

VERMILYEA v. CANNIFF.

Patent—Assignment of territory—Defence of others manufacturing—Absence of fraud, warranty and misrepresentation in the bargain—Plaintiffs' rights.

The plaintiffs, V. and P., being the patentees of a certain article, by memorandum in writing under seal, assigned all their interest in the patent to C. the defendant, for a certain district or territory in consideration of certain royalties and sums of money therein agreed to be paid by C.

In an action to recover the consideration, in which the evidence of C. went to show that he knew before the first year after the making of the contract had expired that others were manufacturing the patented article, but he did not complain or repudiate the transaction or refuse to pay or offer to reassign or require the alleged infringers to desist, or call upon the patentees to vindicate their patent, and that he had a profitable user of the invention to a substantial extent,

Held, that in the absence of fraud or warranty, or representations which induced the bargain, and were falsified in the result, such a contract is simply for the purchase of an interest in an existing patent. No assumption arises, and no implication is to be made that the patent is indefeasible: *Smith* v. *Neale*, 2 C. B. N. S. 85 and *Hall* v. *Conder*, commented on. *Hayne* v. *Maltby*, 3 T. R. 438, and *Saxton* v. *Dodge*, 37 Barb (N.Y.) 84, distinguished. The plaintiffs were, therefore, entitled to judgment.

Clute and *Williams*, for plaintiffs.

Cassels, Q.C., and *Burdett*, for defendant.