

BENNETT V. BENNETT—BRITTON, J.—MAY 20.

*Fraud and Misrepresentation—Execution of Mortgage Procured by Fraud of Mortgagee—Land Conveyed by Mortgagor to Another—Right of Action of Mortgagor for Cancellation of Mortgage—Parties—Mortgage Set aside and Registry Vacated.*]—Action by a widow against her son to have set aside and declared invalid a certain document purporting to be a mortgage executed by the plaintiff and purporting to mortgage to the defendant the north quarter of lot 14 in the 3rd concession of the township of Burford, on the ground that the defendant fraudulently obtained or procured the execution of the document without the knowledge or consent of the plaintiff. The action was tried without a jury at Brantford. BRITTON, J., in a written judgment, said that, upon what might be called the undisputed facts, the plaintiff must succeed. The mortgage was in fact obtained by fraud. The plaintiff did not know that she was signing or had signed any such mortgage. There is no general rule which defines the many ways in which fraud may be committed or influence exercised. The defendant set up that the plaintiff was not now the owner of the land and had no interest, having conveyed her interest to another son (William) before the commencement of this action. The son William was not a necessary party to this action. The mortgage to the defendant did not prejudicially affect any interest that William had in the property, as his conveyance was registered before the registration of the mortgage to the plaintiff. Judgment for the plaintiff declaring that the mortgage was of no effect and directing that the registry thereof be vacated and the instrument and duplicate delivered up to be cancelled, with costs. M. F. Muir, for the plaintiff. W. S. Brewster, K.C., for the defendant.