

KELLY V. HARRINGTON—LATCHFORD, J.—OCT. 10.

Contract—Promise to Pay over Part of Proceeds of Sale of Lands—Validity—Satisfaction by Conveyance to Husband of Promisee—Finding of Trial Judge.—Action for a declaration that the plaintiffs were entitled to a sum of \$910 paid into Court to the credit of the estate of Daniel Kelly. The action was tried without a jury at Toronto. LATCHFORD, J., in a written judgment, said that, when Daniel Kelly, on the 8th April, 1897, conveyed his interest in certain lands in Algoma and Thunder Bay to one John Conlon—Catherine Kelly joining to bar her dower—Conlon executed and delivered to her the agreement on which the plaintiffs' claim in this action was founded. Conlon thereby bound himself to account for and pay over to Catherine Kelly or her assigns one-fourth part of all proceeds derived from the Algoma lands and one-third part of all proceeds derived from the Thunder Bay lands. The moneys in Court were one-fourth of the proceeds of a sale of certain lands in Algoma; and the plaintiffs, as assigns of Catherine Kelly, were clearly entitled to the moneys, unless it could be shewn that the agreement made by Conlon was invalid, or that, if valid, it had been discharged. Its validity was, it must be found upon the evidence, amply established. Had the conveyances made in 1904 by Conlon to Daniel Kelly been made to Catherine Kelly, there would be no difficulty in finding that (apart from a matter of account) they were made in satisfaction and discharge of the agreement of 1897. It might well be that the outstanding right of Catherine Kelly, created in 1897, was forgotten. But, whether forgotten or not, it was not impaired or affected by what was done afterward by Conlon or her husband. Judgment for the plaintiffs as prayed, with costs. W. T. J. Lee, for the plaintiffs. A. E. Knox, for the defendants.