

E. D. Armour, Q.C., for the appellants.
Moss, Q.C., and *Coatsworth* for the respondents.

MOORE v. JACKSON.

Husband and wife—Separate estate.

A woman, married in 1869, acquired in 1879 and 1882 certain lands by conveyances from strangers, her husband then being living. This action was brought in September, 1889, her husband being still living, to recover the amount of certain promissory notes made by her in 1887.

Held, reversing the judgment of the Queen's Bench Division, and restoring that of *ARMOUR*, C.J., 20 O.R. 652, that the lands in question were not the separate property of the married woman and were not subject to her debts.

E. D. Armour, Q.C., for the appellant.
J. R. Roaf for the respondent.

KENT v. KENT.

Husband and wife—Conveyance direct—Devise—Curtesy—Limitations.

A man, married in 1854, conveyed, in 1870, certain lands to his wife by deed under the Short Forms Act, with the usual covenants, for the expressed consideration of "respect and of one dollar." The husband and wife remained in possession of the lands until the wife died in 1872, leaving a will by which she devised her real estate to two daughters of herself, aged respectively seventeen and twelve, and this husband. The husband remained in possession till his death in 1890. This action was then brought by the younger daughter and the son of the elder daughter to recover possession from the devisee of the husband.

Held, that there had been a valid transfer of the equitable estate in the property to the separate use of the wife, and that the husband must be held to have been in possession after her death as guardian for the children, or as trustee of the legal estate for them, so that there was no bar.

Judgment of the Queen's Bench Division, 20 O.R. 445, affirmed, *BURTON*, J.A., dissenting.

W. R. Meredith, Q.C., and *E. R. Cameron* for the appellant.

Gibbons, Q.C., for the respondents.

PLATT v. GRAND TRUNK RAILWAY CO.
Covenant for title—Breach—Damages—Easement.

The defendants granted to the plaintiffs, with covenants for title under the Short Forms Act, certain lands, with the right and easement of erecting a dam at a certain spot. It was afterwards held that they had no right to grant such a right, but it was shown that it was not, in any event, practicable to maintain a dam at the spot in question.

Held, that the defendants were not liable to repay the full purchase money, less the actual value of the land, without the supposed right, but only the actual practical value of the supposed right, which was nothing.

Judgment of *FERGUSON*, J., affirmed, *OSLER* J.A., dissenting.

Shepley, Q.C., and *M. G. Cameron* for the appellants.

S. H. Blake, Q.C., and *W. Cassels*, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

FERGUSON, J.]

[May 28]

GRAY v. RICHMOND.

Will—Devise—Direction to devisee to pay legacies—Charge on land—Registration of will—Notice—Priority of legatees over mortgagees—R.S.O., c. 110, ss. 8, 22.

A testator by his will devised land to his son James, subject to the payment of an annuity to his widow for her life after the expiration of a lease given by the testator, and directed his executors to apply the rent derived from the land so devised in payment of an incumbrance thereon, "so that my son may have the said property at the expiration of the said lease free from all incumbrance"; and he then directed that his son James should pay one-half of the sums thereafter bequeathed to each of his daughters as soon as his own son Daniel should attain the age of twenty-one. To Daniel he devised other land, and directed him also to pay one-half of the bequests to the daughters. Then followed the bequests to his daughters, with names and amounts, to be paid