

Roe v. Lidwell, 11 Ir. C. L. R. (cited in Elphinstone, Bl. ed., p. 160), deals with a deed of conveyance, and does not furnish a rule applicable to the construction or scope of a will.

I find therefore, that this objection to the title has been satisfactorily answered by the vendor, and that the same does not constitute a valid objection.

I have also looked at Holtby v. Wilkinson, 28 Gr. 550; Hickey v. Hickey, 20 O. R. 371; Re Shaver, 6 O. R. 312; Re MacNabb, 1 O. R. 94; Hickey v. Stover, 11 O. R. 110; Re Bain and Leslie, 25 O. R. 136.

It is not a case for any order as to costs.

MACMAHON, J.

FEBRUARY 21ST, 1905.

TRIAL.

GREER v. FITZGERALD.

Fraudulent Conveyance—Action to Set aside—Absence of Collusion and Fraud—Sale at Fair Value—Chattel Mortgage—Estoppel—Change of Position.

Action by an execution creditor of defendant F. A. Fitzgerald to set aside, as fraudulent and void against plaintiff, a certain sale and conveyance of land mortgaged by F. A. Fitzgerald to defendants the Independent Order of Foresters, by those defendants, under the power of sale in their mortgage, to defendant Mary E. Fitzgerald, wife of defendant F. A. Fitzgerald, made pursuant to an alleged agreement entered into by the three defendants.

Plaintiff charged that there was no bona fide sale by the Foresters of the land, but that defendant Mary E. Fitzgerald, with the connivance of her husband, approached the Foresters to purchase it at the amount of their claim, and an agreement, dated 24th September, 1901, was entered into, which was part of a scheme to defraud plaintiff of his rights as a creditor of defendant F. A. Fitzgerald, who was instrumental in procuring the same, the object being to put forward his wife in order to shelter the land from the attack of plaintiff as a creditor of F. A. Fitzgerald.

The agreement referred to recited the terms of the mortgage from Fitzgerald to the Foresters, the default in payment, an attempted sale by auction under the power; that the Foresters held an insurance policy on the life of F. A. Fitzgerald; that taxes amounting to \$870 were due; and that