

Held, that the conviction could not be supported and must be quashed.

Per GALT, C.J. : The by-law, under the circumstances, was invalid.

Per ROSE, J. : The evidence disclosed that the defendant acted under a fair and reasonable supposition that he had a right to do the act complained of, and that in such cases the decision of the magistrate will be reviewed.

Aylesworth, Q.C., for the applicant.

W. R. Meredith, contra.

REID v. SHARPE.

Fraudulent conveyance—Setting aside—Ranking on estate—Costs.

At the instance of the plaintiff, an execution creditor of T., an attaching order issued against M. attaching a debt due from M. to T., and on non-payment thereof an execution was issued against M.'s lands, whereupon M. assigned to S. for the benefit of his creditors. M., with the connivance of S., concealed from the creditors the existence of certain land belonging to M., which M. procured S. to transfer to M.'s wife. The learned trial judge held that the conveyance to the wife was fraudulent and void under statute 13 Elizabeth, c. 5, and must be set aside, and directed the land to be sold and the proceeds paid into court, out of which the plaintiff's costs as between solicitor and client were to be paid and the balance paid over to the assignee for distribution amongst the creditors, among whom the plaintiffs were to rank.

Held, on motion to the Divisional Court, that the decree declaring the conveyance fraudulent and void, etc., and that the plaintiff should rank on the fund, was valid, and the motion was dismissed with costs, to be paid by S. personally; but, *quære*, whether the direction as to the plaintiff's costs was proper, the point not having been raised by the notice of motion, no judgment was pronounced on it.

C. Millar for the plaintiff.

Hughson, contra.

GALT, C.J.]

[March 7.

LEMESURIER v. MACAULAY.

Revivor—Lapse of time—Agreement of solicitors—Effect of.

In 1867 an action of ejectment was brought by L., and notice of trial given for, and the case

entered for trial for 15th October following. On 21st October, L. conveyed the lands to I. On 8th January, 1871, L. died, and on 14th May, 1886, I. conveyed to the plaintiff. In February, 1892, an *ex parte* order was obtained by the plaintiff from the local registrar reviving the action in the plaintiff's name. It appeared that in January, 1872, the then plaintiff's solicitors had notified the defendant's solicitors of the said plaintiff's intention of reviving the action and they gave notice of trial for the ensuing assizes, whereupon it was agreed between the solicitors that on the then plaintiff's solicitors refraining from reviving and proceeding to trial the defendant's solicitors would abide by the result of another named suit, which, if in favor of the plaintiff, an order of revivor might then issue and judgment be entered for the plaintiff.

Held, that the original action terminated on the 21st October, when the plaintiff conveyed to I., and therefore, after such a lapse of time and the plaintiff's rights being barred by the Statute of Limitations, no order of revivor should have issued, and that the court would give no effect to the agreement made by the solicitors, for to do so would be an injustice to the client.

Marsh, Q.C., for the defendant.

Hilton for the plaintiff.

MACMAHON, J.]

[Feb. 17.

RODGERS v. CARMICHAEL.

Will—Construction of—Children—Legacy, period of vesting.

A testator devised and bequeathed his real and personal estate to his wife for life or until remarried, with certain powers of disposal, and by a residuary clause devised the residue—not specifically devised or bequeathed, and not sold or disposed of by his said wife—immediately after the death or remarriage of his wife, whichever should first happen, to his executors to sell and convert same into money, and out of the proceeds pay \$500 to each of his five sons, and to divide the balance, share and share alike, between his three daughters, and if said daughters should die before him or before said distribution, leaving issues, the share or shares of his said daughters so dying should be divided ratably and proportionately amongst the child or children of said daughter or daughters