

given twenty-four hours before the interview, and the plaintiff is to produce the children, for their father's visit, at Lippincott Barracks of the Salvation Army.

The defendant is not to visit or attempt to visit or see the children at the house where the plaintiff resides; nor is the defendant to visit that house to interfere in any way with the plaintiff, who is now keeping a boarding-house, and so engaged that any such visit would be hurtful to her business.

LATCHFORD, J.

FEBRUARY 22ND, 1913.

STUART v. BANK OF MONTREAL.

Trust and Trustees—Interest in Lands Conveyed by Son to Father—Absolute Conveyance—Action to Cut down to Mortgage—Subsequent Transfer by Father to Trustees for Bank in Settlement of Indebtedness—Valuable Consideration—Purchasers for Value without Notice.

Action by a son of the late John Jacques Stuart, of Hamilton, for a declaration that a conveyance of the 30th October, 1900, of an interest on certain lands in Hamilton, known to the parties as "the north end property," for the expressed consideration of \$12,000, though absolute in form, was given to the plaintiff's grandfather, John Stuart, by John Jacques Stuart, merely as security for the repayment of moneys advanced upon account of the said lands by the father to the son; and that the defendants Braithwaite, Alexander Bruce, Wilgress, and R. R. Bruce, to whom the lands were subsequently transferred in trust for the defendant bank, took with notice that John Stuart was merely a trustee of the interest in the lands for his son, and not their absolute owner. The plaintiff asked that, upon payment to the bank of what John Jacques Stuart owed to John Stuart upon the said lands, the plaintiff should be allowed in to redeem. Shortly, the plaintiff's contention was, that the conveyance was in fact a mortgage, and not a deed; and that the defendants, because aware of the fact, were in no better position than the assignees of a mortgage would be in the circumstances.

The questions for determination were: (1) Was the deed taken as security only? (2) If so, were the defendants aware that it was so taken? To entitle the plaintiff to succeed, both