

\$2,405.98, the amount paid by the respondent for taxes on lot 18, with interest from the 26th November, 1915, and the costs of the action, and it was adjudged that, in default of payment, the agreement be rescinded, and that all moneys paid under it to the respondent be forfeited, and the appellant stand foreclosed of all interest in the agreement or the assignment of it to him. Default having been made, a final order was obtained on the 22nd November, 1916, foreclosing the defendants. That order was pleaded as an estoppel in bar of this action; and, as long as the judgment and order stand, they are a complete answer to the appellant's claim to be released from the obligations of the Blain agreement and to have lot 18 transferred to him.

If proceedings have been taken to set aside the judgment and order, as was stated at the hearing of this appeal, and have resulted adversely to the appellant, his appeal should be dismissed with costs; but, if they have not yet been taken, or, having been taken, are still pending, the appeal should be retained for six months, and if, at the end of that period, the judgment and order have not been set aside, the appeal should stand dismissed with costs, but liberty should be reserved to the appellant, if occasion arises, to apply for an extension of the six months.

MACLAREN and MAGEE, J.J.A., agreed with the Chief Justice.

MIDDLETON, J., dissented, giving reasons in writing. He was of opinion that, although there could not be rescission, there ought to be a recovery, for the damage resulting from the fraud, of the amount of the debt, less the actual value of the security transferred; and, as, on the evidence, the security was worthless, the full amount of the debt should be awarded as damages.

Order as stated by the Chief Justice.

HIGH COURT DIVISION.

KELLY, J.

JULY 9TH, 1919

RE RICHER.

Will—Construction—Devise and Bequest to Widow—Use of Estate for Lifetime—Devise and Bequest to Children of what "will Remain Unspent"—Absolute Interest of Widow—Uncertainty of Interest of Children—Trust—Evidence.

Motion by the widow of Honore Richer, deceased, for an order determining a question as to the true interpretation of the will of the deceased.