

distribution was intended to be in such a way as would follow upon an intestacy. There was no such expression as was regarded as sufficient in *Fielden v. Ashworth* (1875), L.R. 20 Eq. 410, where the testator directed distribution among his next of kin "as the law directs," and that was regarded as indicating a distribution *per stirpes* and as overriding another direction looking to equality.

It was obvious that the widows of deceased brothers took no share—but that might be declared, if so desired.

Costs should be paid out of the estate.

LATCHFORD, J.

DECEMBER 20TH, 1916.

MILLS v. TIBBETTS.

Mortgage—Land Titles Act, 1911, sec. 30—Sale by Plaintiff of Half-interest in Mining Locations—Mortgage or Charge by Purchasers in Favour of Plaintiff for Part of Purchase-money—Enforcement—Release under Seal—Construction—Restriction to Portion of Moneys Charged—Purchasers not Relieved from all Liability—Mortgage Executed by Defendants as Trustees—Trustees for Syndicate—Knowledge of Plaintiff—Personal Liability of Defendants—Secret Commission—Finding of Fact—Consideration for Release under Seal Unnecessary—Recovery of Moneys Secured by Charge Less Sum Released—Reduction in Extent of Charge—Costs.

Action to enforce a charge or mortgage, dated the 11th June, 1913, duly made and registered under sec. 30 of the Land Titles Act, 1911, 1 Geo. V. ch. 28, whereby the defendants (Tibbetts and McKenzie) charged all their interest in certain mining claims in the district of Rainy River with the payment of \$2,000 and interest at 8 per cent. per annum.

The action was tried without a jury at Fort Frances.

C. R. Fitch, for the plaintiff.

H. A. Tibbetts, for the defendants.

LATCHFORD, J., in a written judgment, set out the facts and said that in August or September, 1915, the plaintiff executed and delivered a release under seal, dated the 31st May, 1915, reciting the purchase by the defendants from the plaintiff of an interest