

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Nova Scotia.]

MURRAY v. JENKINS.

[June 14.

Vendor and purchaser—Principal and agent—Mistake—Contract—Agreement for sale of land—Agent exceeding authority—Specific performance—Findings of fact.

Where the owner of land was induced to authorize the acceptance of an offer made by a proposed purchaser of certain lots of land through an incorrect representation made to her, and under the mistaken impression that the offer was for the purchase of certain swamp lots only, whilst it actually included sixteen adjoining lots in addition thereto, a contract for the sale of the whole property made in consequence by her agent was held not binding upon her, and was set aside by the court on the ground of error, as the parties were not ad idem as to the subject matter of the contract, and there was no actual consent by the owner to the agreement so made for the sale of her lands. Appeal allowed with costs.

Newcombe, Q.C., for appellant. Jordan, Q.C., for respondent.

Ontario.]

BOULTON v. BOULTON.

[June 14.

Estoppel—Conveyance by married woman—Agreement—Recital.

B., a married woman, in order to carry out an agreement between her husband and his creditor, consented to convey to the creditor a farm, her separate property, in consideration of the transfer by her husband to her of the stock and other personal property on the farm, and of indemnity against her personal liability on a mortgage against said farm. The conveyance, agreement and bill of sale of the chattels were all executed on the same day, the agreement, to which B. was not a party, containing a recital that the husband was owner of the said chattels, but gave the creditor no security upon them. The chattels having subsequently been seized under execution against the husband it was claimed, on interpleader proceedings, that the bill of sale was in fraud of the creditor.

Held, affirming the decision of the Court of Appeal, that the recital in the agreement worked no estoppel as against B.; that as it appeared that the husband expressly refused to assign the chattels to his creditor there was nothing to prevent him from transferring them to his wife; and that the Court of Appeal rightly held the transaction an honest one, and B. entitled to the goods and to indemnity against the mortgage. Appeal dismissed with costs.

Wallace Nesbitt, and W. J. Clarke, for appellants. O'Flynn, for respondent.