

J. W. McCullough, for Janet Maud Strathy and Christina Cains.

W. N. Ferguson, for George A. McVicar.

STREET, J.—The first question arises upon the following facts:—

In August, 1883, Christina McVicar was entitled to certain lands and water lots in the town of Port Arthur, and she and Victoria McVicar and George McVicar were entitled to lands in Fort William. They joined in a conveyance, dated 9th August, 1883, to the Canadian Pacific Railway Company, in fee, the consideration being the agreement of the company to erect their passenger and freight stations near the lands. It was part of the terms of the agreement that, in case the company failed to do so within two years, they should reconvey to Christina McVicar the lands and water lots owned by her in Port Arthur so conveyed by her.

On 15th May, 1893, Christina McVicar conveyed to Victoria McVicar in fee an undivided half of the land previously conveyed to the company.

Christina McVicar died 24th July, 1895, leaving a will whereby she devised to Victoria McVicar the remaining undivided half of the land, upon certain trusts as to one half of it for other persons. She appointed J. F. Ruttan to be her executor.

Victoria McVicar died 29th September, 1899, leaving a will and appointing J. F. Ruttan her executor. By her will she devised her real estate in Port Arthur to the executor in trust to divide it in equal shares between Christina Cains, Janet Maud Strathy, George A. McVicar, and J. F. Ruttan; and she bequeathed her personal property and household effects in Port Arthur to her executor J. F. Ruttan, "knowing that he will make such disposition of same as he shall have been advised by me."

The Canadian Pacific Railway Company failed to carry out the terms of the agreement upon which the property had been conveyed to them, and an action was brought on 7th May, 1900, by George A. McVicar and J. F. Ruttan, as executors of Victoria and Christina McVicar, against the company, to compel specific performance of the agreement of August, 1883, or for a reconveyance of the property, and for damages for the breach of the agreement. On 7th April, 1902, this action was compromised, the company reconveying a portion of the land and paying to the executor of Victoria and Christina McVicar \$7,500, which he treated as realty and divided amongst the devisees of the real estate under the will of Victoria McVicar. . . .