

HIGH COURT DIVISION.

KELLY, J.

APRIL 7TH, 1917.

PATTERSON v. CANADIAN BANK OF COMMERCE.

Parent and Child—Son Inducing Aged and Illiterate Mother to Join in Mortgage of Land—Undue Influence — Absence of Independent Advice—Improvvidence—Knowledge of Mortgagee —Mortgage Set aside as to Mother's Interest in Land.

Action by a widow, 75 years of age, illiterate, and hard of hearing, to have set aside and declared invalid, as against her estate and interest in a farm, a mortgage of the farm made on the 12th December, 1892, by herself and her son William George Patterson to one Crossley, as trustee for the defendants, and to restrain the defendants from proceeding to sell and take possession of the farm, so far as her interest was concerned.

The plaintiff's husband died about 23 years ago, having by his will devised to his son, William George Patterson aforesaid, the farm referred to, subject to charges in the plaintiff's favour intended to provide for her maintenance; these provisions she accepted in lieu of dower, and at the time the mortgage was made she had no other property or possessions of any kind. Her son accepted the devise, subject to the charges, and operated the farm. He got into difficulties and was involved in litigation, in which the solicitor for the defendants acted as his solicitor. He owed the defendants about \$2,000, and the mortgage referred to was for that amount. The plaintiff executed the mortgage in the office of the defendants' solicitor; he read over the mortgage and explained it to her, but she said she did not hear it. Later, the defendants began proceedings on the mortgage; the plaintiff then repudiated it, and this action was brought.

The action was tried without a jury at Stratford.

F. H. Thompson, K.C., for the plaintiff.

S. G. McKay, K.C., for the defendants.

KELLY, J., in a written judgment, said, after stating the facts, that the plaintiff's relationship to her son was such that what he wanted from her he could have; she was in a sense dependent on him; and he exerted the influence of that relationship to obtain what was for his benefit, regardless of her interests. He refrained