

BRITTON, J.

JUNE 3RD, 1903.

TRIAL.

FRANK v. HOHL.

Deed—Conveyance of Land—Action to Set aside—Improvidence—Want of Independent Advice—Absence of Consideration—Costs of Action.

Action brought to set aside a conveyance made on the 13th December, 1900, by plaintiff to defendant of the west half of lot 39 in the 2nd concession south of the Talbot road in the township of Middleton, in the county of Norfolk. It was alleged that plaintiff did not understand that he was executing an absolute conveyance, and did not intend to do so, and that the transaction was an improvident one, and that plaintiff entered into it without having any independent advice, etc. Plaintiff, a German who did not understand English very well, was, at the date of the execution of the conveyance, about 83 years of age and in bad health. His wife, an aged woman, crippled by rheumatism, lived with him. He never had any children. The farm conveyed was not incumbered, and was practically the whole of plaintiff's estate. The farm was of the value of at least \$2,500. Defendant was a young man, not related to plaintiff, but a favourite with plaintiff.

R. A. Dickson, Delhi, for plaintiff.

G. W. Wells, K.C., for defendant.

BRITTON, J.:—Upon the whole evidence, the conveyance ought not to stand. *Waters v. Donnelly*, 9 O. R. 391, referred to. The defendant did not prove nor did it appear in this case "that everything was right and fair and reasonable on the defendant's part." "The transaction must have been known to defendant to have been an improvident one on the part of the plaintiff, who had no proper advice in regard to it." The conveyance from plaintiff (and his wife, to bar dower) to defendant must be set aside on the ground of improvidence and want of independent advice and absence of consideration. No actual fraud has been proved against defendant. He accepted what plaintiff, without advice, was improvidently giving, but he did not urge it upon plaintiff. Indeed he did not appear to realize that plaintiff was giving a farm of considerable value, practically for nothing, and placing himself and his aged wife at the mercy of defendant for a penny of spending money or for an article beyond what would come under the words "respectable maintenance and