

TRUSTEES.

See PUBLIC SCHOOLS, 1, 2.

USES, STATUTE OF.

See VENDORS AND PURCHASERS, 3.

ULTRA VIRES.

See COMPANY, 2.

VENDORS AND PURCHASERS

1. *Vendor and purchaser—Mistake—Sale by plan—Representation—Notice.*—The judgment of O'Connor, J., reported *ante* p. 13, reversed.

Per BOYD, C. The evidence in this case does not come up to the standard laid down in *Dominion Loan Society v. Darling*, 5 A. R. 577, by MOSS, C.J., that "It must be demonstrated what the terms of the bargain were, and that by mutual mistake they were not incorporated in the writing. The proof must be clear, satisfactory, and conclusive."

The defendant bought lot 7, as contained in S.'s mortgage, and obtained a deed from the executors according to a registered plan which is to be treated as incorporated therewith and he is, even as against his representation to the plaintiff that the piece in dispute was a portion of the property she was in treaty for and subsequently purchased, entitled to claim the benefit of G.'s position as purchaser and registered owner for value.

Per PROUDFOOT, J.—Even if the representation were proved the plaintiff owned no property at the time it was made to be affected by it, and

such an expression of opinion should not estop him from purchasing lot 7 eighteen months afterwards. The purchasers at the auction sale got a better bargain than they thought they had made, but they had no knowledge of any right to be interfered with had they chosen to assert their title to the whole lot. This raises no equity against them in the plaintiff's favour.

Even if the defendant had notice of the plaintiff's equity he is entitled to claim the benefit of the want of notice to the purchasers at the auction sale. *Ferguson v. Winsor*, 88.

2. *Marriage settlement—Power of appointment—Execution of or delegation of power—Vendor and purchaser—Power of revocation.*—In a marriage settlement it was provided that "from and after the decease of the survivor of them," the said husband and wife, the lands settled should be held "upon trust for all or any one or more of the children of the said intended marriage . . . but if there shall be no child of the said intended marriage, in trust for the said W. K. S. (husband) and his heirs absolutely after the decease of M. M. S. (wife) if he shall survive her, but if he shall die in her lifetime, then" to be held in trust "for such person . . . as he the said W. K. S. by any deed or deeds with power of revocation, and new appointment to be by him signed . . . or by his last will and testament in writing, or any codicil thereto . . . shall direct and appoint . . ."

W. K. S. predeceased his wife, leaving no children. By his will he devised to his wife all his real and personal estate, and proceeded as follows: "I do also transfer unto her all the powers vested in me to be-