

for undue influence by the grantees, and incompetence of the grantor to execute it. C. alleged in her statement of claim that testator was 80 years old, and a man of childlike simplicity; that defendants, grantees under the deed, had kept him under their control, and several times assaulted him when he wished to leave their house; and that he had requested C. to live with him and take care of him until he died, which defendants would not permit her to do. The deed in question purported to be in consideration of grantees paying testator's debts and maintaining him for the rest of his life.

*Held*, affirming the decision of the Supreme Court of Nova Scotia, that the evidence showed that the deed was given for valuable consideration, and that undue influence was not established. C., therefore, could not maintain her action.

Appeal dismissed with costs.

King, Q.C., for the appellant.

Russell, Q.C., for the respondents.

British Columbia.]

DAVIES v. McMILLAN.

[May 1.

*Sheriff—Action against—Trespass—Sale of goods by insolvent—Intent—Bona fides—Judgment on interpleader issue—Estoppel.*

K., a trader, in insolvent circumstances, sold all his stock-in-trade to D., who knew that two of K.'s creditors had recovered damages against him. The goods so sold were afterwards seized by the sheriff under executions issued on judgments recovered after the sale. On the trial of an interpleader issue in the County Court the jury found that K. had sold the goods with intent to prefer the creditors, who then had judgments, but that D. did not know of such intent. The County Court judge gave judgment against D., holding that the goods seized were not his goods, and that judgment was affirmed by the court *in banc*. D. afterwards brought an action against the sheriff for trespass in seizing the goods, and obtained a verdict, which was set aside by the court *in banc*, the majority of the judges holding that the County Court judgment was a complete bar to the action. On appeal to the Supreme Court of Canada,

*Held*, reversing the decision of the Supreme Court of British Columbia, that the evidence showed that D. purchased the goods from K. in good faith for his own benefit, and the statute against fraudulent preferences did not make the sale void.

*Held*, also, that the County Court judgment, being a decision of an inferior court of limited jurisdiction, could not operate as a bar in respect of a cause of action in the Supreme Court, and beyond the jurisdiction of the County Court to entertain.

*Held*, further, that if such judgment should be set up as a bar it should have been specially pleaded by way of estoppel, in which plea all the facts necessary to constitute the estoppel must have been set out in detail, and from the evidence in the case no such estoppel would have been established.

Appeal allowed with costs.

Moss, Q.C., for the appellant.

Robinson, Q.C., for the respondent.