Hill to my nephews the Hon. R. B. and W. A. B., sons of my brother the late Hon. W. W. B., deceased, their heirs and assigns forever, or in case of the death of them or either of them, in my own lifetime, then I devise the share of such deceased to the heir-at-law or heirs-at-law of such deceased, his heir or their heirs and assigns," and died January 15th, 1866, leaving W. A. B. and two sons and two daughters of the Hon. R B. (who predeceased him) him surviving. One of the daughters died July 10, 1866, unmarried and intestate, during the lifetime of the wife of A. W. B., the life-tenant who was in possession until her death, which happened on April 19, 1870. On her death the two sons and surviving daughter entered into possession, collected rents, sold part thereof, dividing the proceeds thereof in equal shares amongst themselves, and partitioned part of the unsold balance thereof by deed dated Jan. 31, 1885, and in all respects dealt with the said lands, and the proceeds thereof, as if they were all equally interested therein, their father, the Hon. R. B., having by his will divided his estate equally between them, until May, 1886, when the plaintiff, the eldest son of the said Hon. R. B. was advised he was entitled to the whole as "heir-at-law" of his father. In an action for the construction of the said will, and recovery back of the moneys paid over, and the partitioned lands remaining unsold, and the proceeds of those sold, and for a declaration that the plaintiff was solely entitled to the unpartitioned lands. It was

Held, following *Sylee* v. *Deal*, 19 Gr. 601, that the Act 14, 15 Vict. c. 6, C. S. U. C. c. 82, abolishing primogeniture, which came into force January 1, 1852, does not apply except in cases of intestacy, and that the plaintiff was heir-at-law, and that the several divisions of property and money did not come under the head of family arrangements. But

Held, also that the moneys paid over more than six years before action could not be recovered; and following *Rogers* v. *Ingham*, 3 Ch. D. 35, that as to the moneys paid over within six years, an action for money had and received would not lie, for moneys paid by one party to another under a mistake of law common to both where both had a full knowledge of all the facts.

Held, also, that moneys not paid over, being the proceeds of lately sold lands, could not be recovered by the plaintiff, as the lands of which they were the proceeds had become vested in the different parties claiming them by possession as tenants in common, and by the partition deed.

C. Robinson, Q.C., *Maclennan*, Q.C., and *Morris*, Q.C., for the plaintiffs.

Irving, Q.C., *McCarthy*, Q.C., and *George M. Evans* for the defendants, the trustees of Robert Baldwin, deceased.

Moss, Q.C., *W. Barwick*, for the defendant Ross.

Divisional Court.] [June 28.

JOHNSON *v.* CLINE, *et al.*

Fraudulent conveyance—To defeat, delay and hinder creditors—Unable to pay debts in full —48 Vict. c. 26, s. 2 (O.).

E. C. having entered into a partnership at the instigation of his wife, M. E. C. and family, conveyed certain land to her to prevent its becoming liable to any creditors of the new firm. He then, as agent of his wife, placed the same land in the hands of the plaintiff as a land agent to sell or exchange. Through the exertions of the plaintiff an agreement for exchange was arranged between the wife and one E. The plaintiff sued M. E. C. for his commission, and recovered a verdict against her. M. E. C. reconveyed the land to the husband E. C.

In an action to set aside the reconveyance as fraudulent and void against the creditors of M. E. C., it was

Held (reversing GALT, C.J.C.P.), that the conveyance by the husband E. C. to the wife M. E. C. was made to defraud creditors, and following *Mundell* v. *Tinhis*, 6 O.R. 625, that the court will not assist a person who has placed his property in the name of another in order to defraud his creditors, that M. E. C. had an interest in the property which could be made available to her creditors for the payment of her debts, and that the conveyance from M. E. C. was made with intent to defeat, delay and prejudice creditors, and that, as the evidence showed she was unable to pay her, debts in full, it fell within the provisions of 48 Vict. c. 26, s. 2 (O.), and was void.

Moss, Q.C., and *Ritchie*, Q.C., for the plaintiffs.

Foster, Q.C., and *E. Meek* for the defendants.