

was due to the trustee for compensation and costs a sum which was declared to form a lien on the trust estate. It was declared to be disastrous to sell the lands at that time, and the Master directed the trustee to mortgage them to pay off the lien. The defendant in this action was one of several cestuis que trust, and it was recited in the mortgage deed, which they executed, that they had agreed to join therein in order to vest all their interests in the mortgagee, but subject to the terms of the mortgage. The defendant was then an infant under nineteen years of age, but that fact did not appear on the face of the instrument, to which she was made to covenant for payment of the mortgage money. The instrument was marked "approved" by the Master, but not by the official guardian. It was stated, however, at the bar that the latter did approve, and that some pencil marks on the instrument signified his approval. No order was shown requiring execution by the infant. Nearly two years after the defendant came of age she was served with the writ of summons in an action by the mortgagee upon the covenant for payment, and, as she did not appear, judgment was signed against her. Two years later she moved to have the judgment set aside.

*Held*, by BOYD, C., and affirmed by the court, that the circumstances justified the mortgage, but not the personal covenant of the infant; it was contrary to all proper practice to have such a covenant on the part of an infant; and its presence was only to be explained by supposing that the Master's attention had not been called to the fact of infancy.

The covenant was void, as the infant had received no benefit from it and had been induced to enter into it per incuriam; and the delay was not material—the applicant being ignorant of her rights and not called on to disaffirm what was from the outset to her prejudice.

*F. E. Hodgins*, for the plaintiff. *J. R. Roaf*, for the defendant.

Meredith, C. J., Rose, J.]

[Sept. 6.

IN RE ROSEDALE PRESSED BRICK AND TERRA COTTA CO.

FOSTER'S CASE.

*Company — Contributory — Subscription before incorporation — subsequent allotment — Continuing offer.*

Appeal by the liquidator of the company from the Master in Ordinary dismissing an application by the liquidator to settle the name of Edward H. Foster upon the list of contributories of the company in respect of ten shares. The alleged contributory signed the stock-book before the incorporation of the company, and the shares were allotted to him after the incorporation. There was, however, no proof of formal notice of allotment, though there was a correspondence between the alleged contributory and the secretary of the company, in which the latter insisted that the former was a shareholder.

The Master held, following *Tilsonburg Mfg. Co. v. Goodrich*, 8 O.R. 565, that subscription before incorporation was of no avail unless there was a subsequent ratification and there was none such here, and the alleged contributory was not a shareholder by estoppel.