

From Divisional Court.]

[Sept. 14.

ARMSTRONG v. LYE.

Principal and agent—Attorney for sale of land—Direction to pay advance out of proceeds—Attorney subsequently purchasing—Personal liability of attorney—Equitable assignment—Acknowledgment—Registry Act—Notice.

Where the attorney under an irrevocable power from the owner for the sale or other disposition of certain lands, and entitled in the event of sale to a share of the proceeds after payment of charges, agrees to pay out of the proceeds the amount of a further charge made by the owner, he is not personally liable to pay that charge, but the chargee is entitled to enforce his charge as an equitable assignment of the proceeds of sale.

Judgment of a Divisional Court, 32 C.L.J. 413; 27 O.R. 511, reversed
MACLENNAN, J.A., dissenting.

Execution of the document creating the further charge was proved by affidavit and attached to it, but without any proof of execution, were the agreement by the attorney to pay the charge and a transfer by the chargee to the plaintiff of the charge, and all the documents were accepted by the Registrar and registered.

Held, affirming the judgment of a Divisional Court; 32 C.L.J. 413; 27 O.R. 511, that the defect in registration was cured by s. 80 of the Registry Act, R.S.O. c. 114, and that the attorney who subsequently became himself the purchaser of the lands in question was affected with notice of the plaintiff's rights.

J. B. Clarke, Q.C., and F. A. Hilton, for the appellant.

Watson, Q.C., W. Read and R. Ruddy, for the respondent.

HIGH COURT OF JUSTICE.

Moss, J.A.]

[July 20

IN RE MILLS, NEWCOMBE v. MILLS.

Administration—Satisfaction—Insurance for benefit of child—Evidence.

Appeal from the Master at St. Thomas.

A man having been appointed administrator of his deceased wife's estate, received after her death certain moneys payable under a mortgage of which she had died possessed, and appropriated them to his own use. In the course of the administration by the Court of his own estate, a claim was put in by his only surviving daughter to these mortgage moneys. In opposition to the claim, however, it was alleged that a certain life policy which he had taken out, and declared under the Act to secure to wives and children the benefit of life insurance, to be for the benefit of his daughter, and the proceeds of which had been received by her guardian, was a satisfaction of her claim. No evidence was offered to prove that such was the intention of the insured, except certain alleged oral statements by him in his lifetime.

Held, that even if it was open to anyone, after the death of the insured, to show upon evidence of expressions of intention, understandings, or bargains made or come to before effecting the insurance, and to which the beneficiary was no party, that the money secured was, when paid, not to be for her abso