kin, a balance should remain in their hands, they should pay such balance to the plaintiff.

Held, that the defendants were in reality agents for the plaintiff, and on no principle of fair dealing ought the other persons interested in the estate be called upon to pay the costs of the litigation, and the same were properly payable from the share of the plaintiff in the fund.

Bethune, Q.C., and *Whiting*, for the appeal.

Moss, Q.C., and *O'Sullivan*, contra.

From Chy. Div.]

TRINITY COLLEGE v. HILL.

Mortgage—Absent defendant—Service.

Where proceedings were instituted in 1876 against persons interested in a mortgage estate, one of whom was resident out of the jurisdiction, and the usual decree and account was made and taken; and the application to make such decree absolute was not made until May, 1882, and in the early part of the month following a petition was presented praying that the defendants might be allowed to redeem, alleging the ignorance of the absent defendant of the proceedings until his return to the country, a few days before signing the petition, and the ignorance of both defendants of any proceedings subsequent to the filing of the bill; and that the defendant upon whom the bill was served was about ninety years old and of feeble intellect, unfitted to transact business.

It was shown that in March, 1882, before the order making the decree absolute, the plaintiffs had sold to one Grattan, who bought, relying on the plaintiff's title under the final order of foreclosure which, on its face, was expressed to be subject to the general orders of Chancery 114, 5, 6.

Under the circumstances the Court (reversing the order of Boyd, C.) made an order to open the foreclosure on the usual terms of paying principal, interest and costs of plaintiffs and of the purchaser (not including any costs of the appeal, of which each party should bear their own), together with any costs incurred by the purchaser in connection with his purchase of the property, and in default of payment on or before 1st October next, appeal to be dismissed with costs.

Bain, for appeal.

Vankoughnet, Q.C., and *Hoyles*, contra.

DUNLOP v. DUNLOP.

Conveyance obtained by undue influence.

In an action to restrain waste it was shown that the plaintiff obtained from his father a deed of the premises in question, the father, however, swearing that he supposed when executing the document that it was his will he was making, and the conveyancer who prepared the deed admitted in his evidence that he might have suggested to the subscribing witness not to talk too much to the old man about the writing, as perhaps he would not sign it; and the deed as prepared was silent altogether as to certain provisions and payments that were to be made, as alleged by the plaintiff. The Court reversed the Decree pronounced by the Court below, ordered the bill to be dismissed with costs, and the deed to be delivered up to be cancelled.

G. T. Blackstock, for the appeal.

Edwards, contra.

REGAN v. WATERS.

Surrogate Court—Mental capacity.

On the trial of an issue, directed by the Surrogate Judge, before a jury, evidence was given as to the mental capacity of the testator by persons acquainted, and having frequent intercourse, with him, the grant of probate being opposed by the widow on the ground, amongst others, of mental incapacity. The judge at the trial being of opinion that the witnesses examined were not of a class qualified to give scientific evidence withdrew the case from the jury, and gave judgment in favour of the plaintiffs, granting probate of the will, which he afterwards refused to set aside. On appeal, a new trial was directed and the costs of appeal ordered to be paid by the plaintiffs, as the opinions of such witnesses might "be of more or less value according to their skill, or experience or aptitude for judging of such matters all which tests would be applied by the jury; and mere opinions unsupported by facts justifying them would be rejected altogether without reference to the witness being called as an expert or not professing to speak in that somewhat indefinite character."

McCarthy, Q.C., for appeal.

R. M. Meredith, contra.