

The plaintiff is a granddaughter of the deceased, her mother being still alive: the defendant James H. Kennedy is a son of the deceased and is named as an executor in the will: David Kennedy, Robert Kennedy, Frederick Kennedy, Margaret Downs, Joseph H. Kennedy, and Marion Hill are other children of the deceased. We were informed that Charles Kennedy, another child of the deceased, died in the United States recently leaving a widow who has since died, it not being known whether he had or not, left any children; the defendant Madeline Kennedy is a daughter of Frederick Kennedy, the defendant Annie Maude Hamilton is a legatee under the will, and the defendant the Suydam Realty Co., Limited, has an agreement with James H. Kennedy to purchase from him as executor for \$75,000 the land belonging to the estate not specifically devised.

The following is the will: [The will is here set out in full, but for the purposes of this note, reference may be made to the judgment of TEETZEL, J., ante, 822-825.]

David Kennedy, the testator, died in February, 1906; Annie Maude Hamilton renounced her right to probate and, as the plaintiff was still a minor, probate was granted to James H. Kennedy, reserving the right to the plaintiff to apply upon attaining majority. Shortly after attaining full age, she at the request of James H. Kennedy, also renounced her right to probate by an instrument in writing. She claims (1) that the renunciation was obtained by undue influence, and in ignorance of her rights; (2) and that in any case she did not renounce her right to act as trustee. Then she says (3) that the sale to the Land Company was at a gross undervalue and that she did not consent to it, and accordingly it should be set aside. Claims not to be disposed of upon this motion I pass over. The plaintiff then (4) asks an interpretation of the residuary clause (clause 20) of the will, in several respects.

James H. Kennedy puts in a statement of defence, claiming as to (1) that this Court has no jurisdiction, as to (2) there is no trust as distinct from the executorship, as to (3) the plaintiff has no interest, and as to (4) the same. An order was obtained for the trial of these questions of law under Con. Rule 259, and a motion was made before Mr. Justice TEETZEL, whose disposition of the case will be seen in the report, 2 O.W.N. 821; 18 O.W.R. 782.

The plaintiff now appeals, and the matter has been argued before us by counsel for all concerned, except certain of the defendants who appeared in person.

In respect of the first claim, I think the judgment appealed from is right. Under the original English practice it is said that