Osler, J.]

GARDINER v. KLEOPFER.

Assignment for creditors—Assent of creditor.

After the execution of a deed of assignment in trust for creditors, the assignee called a meeting of the creeitors, at which the defendant, a creditor, attended and assented to a resolution appointing him one of the trustees to aid the assignee in winding up the estate, and a resolution was also passed to pay certain arrears of wages; and he examined and reported on the amount and condition of the stock. A few days afterwards he brought an action on his claim against the debtors, recovered judgment by default and issued execution, and then attacked the deed.

Held, that the defendant must be deemed to have assented, and was estopped from denying its validity.

CHANCERY DIVISION.

Full Court] [Sept. 5.

WRIGHT v. LEYS.

Assignment of mortgage—Purchase in trust for mortgagor—Statute of frauds—Notice.

The plaintiff, who was mortgagee of certain lands, alleged that L, the present holder of the mortgage, purchased it from C with knowledge of the fact that C had purchased it from the original mortgagee as trustee for the plaintiff, who was to be allowed to redeem on paying such sum as C should pay for the mortgage and a certain additional sum for C's services.

Held, that the above agreement fell within the statute of frauds, and should be evidenced in writing.

Held, also, that even if this were not so, L could not be affected by the said agreement, having purchased without notice of it.

D. B. Read, Q.C., and *W. Read*, for the appellant.

Boyd, C.] [November 19.

MCCARTER v. MCCARTER.

Liability of executors for estate moneys received by solicitor—Negligence.

A B and C, three executors under a will, sold certain real estate of the testator. C, who was entitled to the annual income of the proceeds, took the most active part in the management of the estate, as the others lived at a distance, and employed a solicitor who received two sums—$980 and $1,580—part of the proceeds of said sale, the former in January, 1876, and the latter in February, 1882. Both the other executors were aware of his employment and that these sums were in his hands. In February, 1884, the solicitor absconded, causing a loss to the estate of $1,960, the balance then in his hands. In the will there was a clause "that each (of the executors) should be responsible for his or her acts only, and irresponsible for any loss unless through wilful neglect or default."

Held, that all three were equally liable, and must make good the amount to the estate.

Laidlaw for the plaintiff.

G. H. Watson, *Ermatinger* and *Teetzel* for the defendants.

Boyd, C.] [Dec. 17.

STOBBART v. GUARDHOUSE.

Will—Devise—Child—Life estate—Estate in fee.

T. S., after providing for his widow in his will, made the following devise:—"And I give and devise to my nephew, R. S., Lot No. 30, in the Second Con. said Township of Etobicoke, during the term of his natural life (excepting he have a child or children) if not, at the expiration of his life to go to my daughter Ann Guardhouse or her heirs or . . ." The will also contained a residuary devise in favour of the testator's widow. R. S. took possession, married, had children, and died, leaving his widow and several children him surviving.

In an action by the widow of T. S., claiming that R. S. was only entitled to a life estate in the lot, and that she was entitled to it in fee under the residuary clause, it was

Held, following *Lethicullieur* v. *Tracy*, 3 Atk. 796, that an estate in fee may, by implication, be vested in the child, and that, by applying the rule in *Bifield's* case (acted upon in *Doe dem Jones* v. *Davies*, 4 B. and Ad. 55), and reading "child or children" as *nomen collectivum* created an estate tail in R. S., that "child" under the circumstances was not a *designatio personæ*, but