

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.) was delivered by

STREET, J.—I think the effect of the will of Colin Campbell, of Weymouth, dated 28th December, 1875, was to vest all the testator's real estate except the dwelling-house in his six daughters in fee, subject to a power of sale in the executors, and subject also to a restraint on alienation by them of their shares during their lives, as to the effect of which it seems unnecessary to inquire. Colin Campbell, of Ottawa, son of the testator, appears to have made certain claims against his father's estate, which were finally compromised, with the consent of the six daughters, by the payment to him of \$2,000 in cash, and by an agreement to convey the lot in question to a trustee for his children. Before this conveyance was made, he also died, and by his will he recited that he had held the land in question as trustee for his children since 1882 or 1883, by virtue of a quit claim deed from his father's estate; and he directed that his widow should hold the lot as trustee for his children; and that it should be sold to the best advantage on his youngest child coming of age, and the proceeds equally divided amongst his children.

Colin Campbell, of Ottawa, died in October, 1896, and on 9th April, 1900, the executor of Colin Campbell, of Weymouth, in pursuance of the agreement of compromise above mentioned, conveyed the land in question to the present vendor, the widow of Colin Campbell, of Ottawa, her heirs and assigns, in trust for the children of Colin Campbell, of Ottawa, in equal shares.

In my opinion, this conveyance passed the estate in the land to the present vendor as trustee for the children of Colin Campbell, of Ottawa. The executor of Colin Campbell, of Weymouth, had a power of sale under the will, and the agreement with Colin Campbell, of Ottawa, for the conveyance to the nominee of the latter, as part of a compromise of the large claim made by him against his father's estate, was a proper exercise of the power of sale, and was confirmed as such by the persons entitled to the land subject to the power. But from the time of the execution of the agreement Colin Campbell, of Ottawa, ceased to have any beneficial interest in or power over the land; it was vested from that time in the executor of Colin Campbell, of Weymouth, as trustee for the children of Colin Campbell, of Ottawa; and therefore the clause in the will of the latter in which he purports to make his widow trustee of it for his children and to give her a power of sale of it were of no effect, excepting merely that of nominating the trustee who was to take the title in trust for his children.