

The learned judge refused to set aside the order, on the grounds that the application was not one to alter the order on the ground of slip or oversight, and that the order had been drawn up and represented the real opinion of the Court, and that in such case he had no jurisdiction to alter it; but he gave leave to appeal from the order, notwithstanding that the time for appealing had elapsed, and he directed a stay of proceedings.

*Held*, that the cause of action being one that under the provisions of R.S., c. 113, s. 1, survived, in part at least, to the executrix, defendant's counsel was entitled to the order under O. 17, R. 8, requiring her to appear and obtain leave to carry on the proceedings, and that the order was rightly made.

*Held*, also, that the learned judge was right, for the reasons stated by him in refusing to rescind and set aside the order.

*V. J. Paton*, for appellant. *J. A. McLean*, Q.C., for respondent.

Full Court.]

ROSS P. SUTHERLAND.

[May 15.]

*Solicitor and client—Misappropriation by solicitor of money entrusted to him to pay off mortgage—Foreclosure—Agency—Estoppel.*

Defendant, who was desirous of purchasing from C. land of which C. was owner, subject to a mortgage for \$1,000, held by F., was referred by C. to M., as his solicitor, through whom the negotiations could be carried on. When the negotiations were completed, defendant paid to M. the sum of \$1,600, which represented the whole price of the property, including the amount of the mortgage held by F. M. absconded from the province without having paid over to F. the amount due her. The evidence showed that F. executed a release of the mortgage and delivered it to E. C., with instructions not to allow it to go out of her hands until she received the money, and that E. C. placed the release for a time in the hands of M., to whom she communicated her instructions, and that the release was finally returned to E. C. by M. It appeared, however, that M. was never employed in any capacity by F., and that F. was not aware that the release was in his hands.

In an action by plaintiff, as executor of F. for the foreclosure of the mortgage,

*Held*, affirming the judgment of GRAHAM, E. J., and dismissing defendant's appeal with costs, that plaintiff was entitled to the foreclosure sought.

*Held*, also, that plaintiff was not estopped by statements made by E. C. to defendant, after the payment of the money by defendant to M., from which it was claimed defendant was led to believe that F. had been made aware that the money had been paid over to M., and that she looked to him for payment, it not appearing that E. C. made the statements in question, intending that defendant should act upon them, or that the statements were of such a character that any man of ordinary intelligence