

MAY 26TH, 1906.

## DIVISIONAL COURT.

## PURCELL v. TULLY.

*Deed—Construction—Life Estate—Remainder in Fee—Grant of Land—Habendum—Repugnancy—Remaindermen not Named—Description of, as Children of Life Tenant—Sufficiency—Reformation of Deed—Claim for Equitable Execution.*

Appeal by plaintiff from judgment of CLUTE, J., at the trial, dismissing an action for equitable execution, and adjudging in favour of defendants the reformation of a conveyance of land to Alexander P. Tully, deceased.

The appeal was heard by MULOCK, C.J., BRITTON, J., MABEE, J.

D. B. MacLennan, K.C., for plaintiff.

R. Smith, Cornwall, for adult defendants.

M. C. Cameron, for infant defendants.

MULOCK, C.J.:—This is an action brought by . . . Patrick Purcell against Elizabeth Tully, administratrix of the estate of Alexander P. Tully, deceased, and Mary Jane Tully and others, his children and heirs-at-law, to recover \$468.80 owing to plaintiff by deceased.

After setting forth the particulars of the indebtedness of deceased, plaintiff in his statement of claim alleges that deceased at the time of his death was seised in fee simple to his own use of certain lands therein mentioned; that by indenture of bargain and sale, dated 6th May, 1902, made between Isabella Purcell, the then owner thereof, and Alexander P. Tully, the former granted the said lands unto the latter for the term of his natural life, and after his death unto his children who should survive him, or should have died before him leaving lineal descendants surviving at his death, their heirs and assigns forever, in equal shares, in fee simple, as tenants in common; and that the said indenture was in law a conveyance to Alexander P. Tully of the said lands in fee simple, and that the same were liable to be sold under execution for payment of the debts of deceased. . . .