

ness at the time was serious, and might soon result in death. Both he and his wife thought a will would, in that event, be more open to attack by his next of kin than a deed. Then there was the possibility that he might recover. He was known to own considerable property during a long and active life; he had occupied important municipal and other public positions; and he wished, should his illness pass away, to resume his place in the community.

I have no reason whatever to think that their agreement was anything but what the defendants say it was.

Martin did recover his health—not indeed fully, but to a very great extent—and asked for and obtained the reconveyance now the subject of attack.

On the 21st July, the plaintiffs brought their action for the price of the automobile. The action was against both husband and wife. Their main defence was that the sale was upon a condition which had not been observed. It failed; but judgment was given against Mrs. Martin alone, and the action dismissed as against her husband.

The conveyance of the 30th June was not, I find, made with any fraudulent intent on the part of either defendant. It was not a voluntary conveyance. Under the agreement made between Martin and his wife prior to the execution by him of the conveyance of the 13th April, she was, at his request, bound to reconvey. In the circumstances, she was merely a trustee for him of the lands included in the conveyance.

An execution against her in the interval between the 13th April and the 30th June could not bind the lands which were subject to the equity and trust in her husband's favour. See *Jellett v. Wilkie* (1896), 26 S.C.R. 282, especially the judgment of Strong, C.J., at p. 289, and the cases there cited, as conclusively establishing the principle that an execution creditor can sell the property of his debtor only subject to all such liens, charges, and equities as the same was subject to in the hands of his debtor.

The plaintiffs would, therefore, fail to recover against the lands in question even had the conveyance they impeach not been made.

I find nothing which operates against Mrs. Martin by way of estoppel. It was with her husband's consent that she authorised the plaintiffs to sell the farm in Maidstone for \$10,000—a price at which both defendants were quite willing the farm should be sold.

The action fails and is dismissed with costs.