

mortgagor, and he was committing a fraud upon his associates in the purchase by representing that a stranger was the vendor and that the price was more than four times as much as he had himself paid; and, therefore, notice to his associates could not be imputed of that which was within the knowledge of R. and the solicitor and which it was their interest to conceal.

Cameron v. Hutchinson, 16 Gr. 528, applied.

Held, also, that R.'s associates were entitled to set up the defence that they were bona fide purchasers for value without notice against the plaintiff's claim to set aside the pretended sale and conveyance to H., and they were entitled to costs against R.

Faulds v. Harper, 11 S.C.R. 639, followed.

Held, also, that, as an undivided one-fourth of the mortgaged premises remained vested in R., the plaintiffs were, as to him, entitled to redeem; and if on redemption he should not be in a position to re-convey the other undivided three-quarters, he must make compensation to them for the value of it.

Held, lastly, that there was jurisdiction in the court, notwithstanding that R. and his two nominees were foreigners, not domiciled nor resident in Ontario, to award judgment against them, not only for redemption, but also for costs and damages or compensation, the compensation being incidental to the redemption, R. having by appearing attorned to the jurisdiction, and the case moreover falling within clauses (b), (d), (e), and (f), of sub-s. 1 of Rule 162.

J. L. Murphy and J. E. O'Connor, for plaintiffs. *W. R. Riddell, K.C., E. S. Wigle, and J. H. Rodd*, for various defendants.

Trial of Actions, Lount, J.]

[July 23.]

VANLUVEN v. ALLISON.

Will—Construction—Devise—Estate in fee—"Leaving no children"—Divesting—Executory devise over—Contrary intention—Vendor and purchaser—Doubtful title—Specific performance.

A testator by his will gave his widow a life estate in land, and then devised it to his son Philip and his lawful heirs and assigns, and then, after devising certain other property to another son, he continued: "I also give, devise, and direct, should any of my sons *die leaving no children*, the property bequeathed to said son shall be equally divided between all my children, sons and daughters [and grand-daughters aforesaid, share and share alike. . . . Should any of my children be disposed to sell any part or the whole of the party bequeathed to them, I desire and direct that they give the preference or refusal to one of the family. . . ."

The testator died in 1878, leaving him surviving his widow, who died in 1898, three sons, Philip being one, and four daughters. At the time of the testator's death Philip was married and had two children. In 1891 the