

Full Court.]

STILL v. HASTINGS.

[May 18.

*Malicious prosecution—Want of reasonable and probable cause—
Functions of judge and jury—Nonsuit—Setting aside—New
trial.*

Appeal by the defendant from the order of a Divisional Court, 13 O.L.R. 322, setting aside a nonsuit and directing a new trial, was dismissed at the hearing.

Moss, C.J.O., Osler, J.A., Garrow, J.A., Meredith, J.A.,
Riddell, J.]

[June 5.

EMERY v. FICK.

*Parent and child—Conveyance of farm by father to daughters
—Agreement for maintenance—Action to set aside transac-
tion—Understanding and capacity of grantor—Absence of
undue influence—Improvidence—Status of heir at law as
plaintiff.*

The decision of a Divisional Court, 13 O.L.R. 178, dismissing an action by one of the heirs at law of the grantor to set aside a conveyance of a farm by a father to his daughters, for undue influence, improvidence, etc., was affirmed, the majority of the Court of Appeal agreeing with the reasons given by the Court below.

Per MEREDITH, J.A.:—If the transaction had been attacked by the grantor in his lifetime, it would have been set aside; it was not so attacked, but rather confirmed; and (per RIDDELL, J., also) no one representing or claiming under the grantor could successfully attack it.

Per RIDDELL, J.:—Since the Devolution of Estates Act, the right of the heir at law to sue to set aside a transaction of this kind is not higher than the right of a residuary legatee to sue in respect of personal property; the plaintiff had no right to bring the action at all until the expiration of the period of the three years fixed by 2 Edw. VII. c. 17, s. 3, amending R.S.O. 1897, c. 127, s. 13; and the fact that the personal representative was made defendant did not assist the plaintiff.

J. S. MacKay, and J. M. McEvoy, for plaintiff, appellant.
Douglas, K.C., and V. C. Brown, for defendants.