

that he owned that lot. A supplementary affidavit, covering the point, should be filed.

The widow took an estate in fee simple in her own right in the land referred to in the will—her right or estate was not controlled or limited by the last paragraph of the will, which purported to dispose of the real estate in the event of her dying without a will: Halsbury's Laws of England, vol. 28, p. 679, para. 1295; p. 684 et seq., paras. 1303, 1305, 1307.

The last paragraph of the will was at most an indefinitely expressed attempt to annex an inconsistent and repugnant condition to the disposition or devolution of a fee definitely conferred upon the wife.

Comiskey v. Bowring-Hanbury, [1905] A.C. 84, distinguished.

It was said that the widow had made a will, and it was suggested that it should be declared irrevocable, as in *In re Turner* (1902), 4 O.L.R. 578. The learned Judge thought that procedure unworkable in this case.

There should be an order declaring that the land is the property of the widow in fee simple; the order not to issue until the affidavit required has been filed.

Costs out of the estate—\$10 for the Official Guardian and \$30 for the applicant.

SUTHERLAND, J.

MAY 27TH, 1919.

MITCHELL v. THOMPSON.

Money Lent—Advance of Money upon Promissory Note Made in Name of Trader by Manager as Attorney—Authority of Attorney not Covering Transaction—Money Placed to Credit of Trader in Bank and Used for his Benefit—Liability to Repay—Quasi-contract—Action on Promissory Note—Amendment—Recovery for Money Lent.

This action was brought against Thompson Brothers upon a promissory note for \$1,500, dated the 5th September, 1918, to recover that sum and interest and also a further sum of \$97.75 for interest on another promissory note.

William Thompson, in and before 1918, carried on business as a brickmaker, under the name of Thompson Brothers; on the 4th May, 1916, he gave his son Harold a limited power of attorney to do financial business for him with a specified bank. On the 21st January, 1918, he executed a new power of attorney by which he appointed his son Harold or one Wiers his attorney. Thompson Brothers, through Harold A. Thompson, borrowed