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HIGH COURT DIVISION.

MIDDLETON, J.

MAY 25TH, 1918.

RE BECK TRUSTS.

Trusts and Trustees—Defaulting Trustee-company—Payment by Sureties of Amount Due to Trust Estate—Claim of Trustee against Life-tenants for Moneys Improperly Paid and Received—Subrogation—Right of Sureties—Liquidator of Trustee-company—Attornment to Jurisdiction of Ontario Court.

Motion by sureties for an order declaring that, on payment of the amount due by the executors, they were entitled to be subrogated to the right of the liquidator and beneficiaries to retain and receive the income of the life-tenants until the amount paid to them improperly had been reimbursed.

See *Re Beck Trusts* (1915-16), 9 O.W.N. 283, 10 O.W.N. 218; *Attorney-General for Ontario v. Railway Passengers Assurance Co.* (1917-18), 13 O.W.N. 247, ante 188.

The motion was heard in the Weekly Court, Toronto.

W. N. Tilley, K.C., for the sureties.

H. T. Beck, for the trustees and life-tenants.

Casey Wood, for the liquidator of the Dominion Trust Company.

MIDDLETON, J., in a written judgment, said the right of the sureties was so plain that, once the facts were understood, there did not seem room for argument.

There was one trust fund in respect of which the two ladies, Doris and Helen Beck, were entitled to income only.

They were paid by the trustees much more than the income, and it had been already declared that their future income must be impounded until this advance was repaid.

There was an attempt to set off other claims of these ladies in respect of other funds against the loss of corpus of this fund to which they were not entitled; but that attempt failed, for obvious reasons.

The sureties of the former trustees had now been sued for their default, and judgment had passed against them.

They now asked that, having made good the default, they should be declared to have the right to look to the impounded income of the life-tenants to recoup themselves for the amount paid.

The liquidator of the former trustees regarded this as an asset of his liquidation, and sought to make it liable for the general creditors.

This claim was without foundation. The sureties, having paid the debt, were entitled to receive all securities held either by the creditor or the trust company in respect of the advance made to the life-tenants.

To hold otherwise would enable the general creditors of the defaulting trustee to profit by this particular default.

Mr. Beck raised a question as to jurisdiction. The jurisdiction was undoubted. The liquidation order was not made by this Court, but the liquidator applied to this Court in the matter of this estate, and so attorned to the jurisdiction of the Court.

This estate is subject to the jurisdiction of the Ontario Courts, and there can be no doubt as to the right to adjudicate on the question submitted.

As to costs, justice will probably be accomplished by making no order.

BENNETT V. BENNETT—BRITTON, J.—MAY 20.

Fraud and Misrepresentation—Execution of Mortgage Procured by Fraud of Mortgagee—Land Conveyed by Mortgagor to Another—Right of Action of Mortgagor for Cancellation of Mortgage—Parties—Mortgage Set aside and Registry Vacated.]—Action by a widow against her son to have set aside and declared invalid a certain document purporting to be a mortgage executed by the plaintiff and purporting to mortgage to the defendant the north quarter of lot 14 in the 3rd concession of the township of Burford, on the ground that the defendant fraudulently obtained or procured the execution of the document without the knowledge or consent of the plaintiff. The action was tried without a jury at Brantford. BRITTON, J., in a written judgment, said that, upon what might be called the undisputed facts, the plaintiff must succeed. The mortgage was in fact obtained by fraud. The plaintiff did not know that she was signing or had signed any such mortgage. There is no general rule which defines the many ways in which fraud may be committed or influence exercised. The defendant set up that the plaintiff was not now the owner of the land and had no interest, having conveyed her interest to another son (William) before the commencement of this action. The son William was not a necessary party to this action. The mortgage to the defendant did not prejudicially affect any interest that William had in the property, as his conveyance was registered before the registration of the mortgage to the plaintiff. Judgment for the plaintiff declaring that the mortgage was of no effect and directing that the registry thereof be vacated and the instrument and duplicate delivered up to be cancelled, with costs. M. F. Muir, for the plaintiff. W. S. Brewster, K.C., for the defendant.

