

brought an action to have it declared that his judgment for the balance of his legacy was a charge upon the monies in the receivers' hands in priority to the personal creditors of T. H.

Held, affirming the judgment of the Court below, that it having been established that the monies held by the receivers were assets of the testator, or the proceeds thereof, E. H. was entitled to priority of payment though his judgment was registered after those of the other creditors.

Held, also, that the legacy of E. H. was a charge upon the realty of the testator, the residuary devise being of "the balance and remainder of the property and of any estate" of the testator, and the words "property" and "estate" being sufficient to pass realty. This charge upon realty operated against the mortgagees who were shown to have had notice of the will.

Christopher Robinson, Q.C., for the appellants.

S. H. Blake, Q.C., for the respondents.

Nova Scotia.]

June 28, 1892.

CUNNINGHAM V. COLLINS.

Mortgage—Foreclosure suit—Parties—Lessee of mortgagor—Protection of rights of—Practice.

In an action for foreclosure and realization of mortgages, the original defendants were the administrator, heirs at law and certain devisees of the mortgagor, subsequent incumbrancers, namely judgment creditors of some of the heirs, and the lessee of a part of the mortgaged property by lease from some of the heirs, not being joined. None of the defendants appeared, and an order was made foreclosing the equity of redemption, and directing the lands to be sold unless the amount due on the mortgage was paid before the day fixed for the sale. The sale was to be advertised in a newspaper and by hand-bills, copies of said hand-bills to be mailed to each of the subsequent incumbrancers. By a subsequent order the property was to be sold in two separate lots, the Queen Hotel property, which was that under lease, to be sold first. By a further subsequent order made on the day fixed for the sale, on application of Mrs. S., the lessee of the Queen Hotel, it was ordered that upon payment into Court by S. & K. of \$37,019,