

paid into Court, is the property of the defendant, Mrs. Raycroft; and as to her the action is dismissed with costs.

RAYCROFT v. COOK.

This was another contest between the co-executrices which was ordered to be tried with *Blaisdell v. Raycroft*.

The co-executrix, Mrs. Cook, joined hands with her sisters and sought to have the sale of the property treated as a nullity and to have the \$10,000, which has been paid into Court as assets of the testator's estate. In that event \$1,800 of it would be set apart for the purchase of a house in which she would have in estate in remainder after the widow's death and the balance would be divisible between the two residuary legatees. The same reasons which apply against relief being given to the sisters are equally, and even more forcible as to the co-executrix. She was informed of what the transaction was by Mr. Dowsley, and was satisfied, and indeed actively intervened to procure the signatures of the two sisters. After the land came into the hands of Mrs. Raycroft, she dealt with her in the application of the proceeds of sale whereby it was ascertained after all the accounts of the estate were taken that a balance of \$679 was *pro tanto* available towards the \$1,800 to be provided for the purchase of a comfortable home for the widow. The widow having come into the possession of the farm it was arranged between the co-executors that as to this \$679 the widow should have only a life estate with remainder to Mrs. Cook. To carry this out a mortgage for that sum was put upon the farm with appropriate words of conveyancing to carry out this agreement. That was accepted by Mrs. Cook; the mortgage contained a provision for the cancelling of the security upon the deposit of a like sum of money in a bank at Prescott, at any time the widow should desire. After the sale for \$10,000 application was made to discharge the mortgage upon the deposit of a proper sum in the proper bank. This was refused by Mrs. Cook, who then set up the larger contention which has failed. I find that the defendant was in the wrong; she should have relied upon the deposit in the bank as her security and have executed a discharge of the mortgage. That is now declared, as the judgment of the Court, and judgment accordingly with costs to the plaintiff. If the parties cannot otherwise agree, the \$679 may be paid into Court, payable out according to the terms of the