

J. Nason, for plaintiff.

C. H. Porter, for defendants.

THE COURT (BOYD, C., FERGUSON, J.,) held that, so far as the application was based on Rule 938 asking for construction of the will of the grandfather, it was defective because of the absence of the representatives of that estate, which was necessitated by the directions of Rule 939 (2), and it was also defective because of the absence of the eldest son of defendant Rogers. Besides, "assignment" in this rule should not be read as extending to the case of an execution creditor of one of the beneficiaries under the will. The summary relief contemplated in the case of an execution creditor by "proceedings without writ," the general title of ch. xv. of the Con. Rules, is that embraced under sub-title 9, entitled "Summary inquiries in aid of execution," beginning with Rule 1015. The motion was also launched under Rules 1016-1019 of this sub-title. But it is inexpedient to attempt so to use these Rules in this particular case, both because of the absence of the representatives of the estate and because an action was already pending upon the Pearce mortgage, in which the applicant was served with notice T., before he made this motion. He submitted to the jurisdiction of the Court in that action and proved his claim as subsequent incumbrancer. If not redeemed, the interest of the defendants the mortgagees in the property seized in execution will be determined by the Master before it is sold, and the relief now sought on this application will then be the proper subject of adjudication, with all parties interested before the Master.

Appeal dismissed with costs to defendants; such costs to be deducted from plaintiff's judgment.

MACLAREN, J.A.

NOVEMBER 14TH, 1903.

CHAMBERS.

RE CLARKE.

*Trusts and Trustees—Investments—Realization—Tenants for Life—
Remaindermen—Election—Apportionment of Proceeds of Sale—
Rate of Interest.*

Motion by the Toronto General Trusts Corporation, who were trustees under the will of the late Mrs. H. M. Clarke, and under a settlement by one of the defendants, for an order and direction as to whether any portion, and if so what portion of the purchase price of the premises Nos. 40, 42, 44, King street