

Mr. Cartwright, }
 Official Referee. }

[March 18.]

LEASK v. HELLYARD.

Adding parties—Service by posting up.

Action to set aside a will on the ground of undue influence. Plaintiff, who is one of the next of kin to deceased, moves to add other next of kin. Present defendant objects that as to such defendants these proceedings being, in the High Court, should be commenced by writ as provided in Rule 224. No one appears for proposed defendants, though served with notice of motion.

Order made adding them as defendants; statement of claim and copy of this order to be served on them, and statement of defence to be put in within eight days, otherwise all further proceedings may be served on them by posting up.

Scott, Q.C., for plaintiff.

Masten, for present defendant.

ARMOUR, C.J.]

[March 20.]

FREEBORN v. FREEBORN.

Action on covenant in mortgage—Statute of Limitations—Dower in partitioned lands.

Motion by plaintiff for judgment on the pleadings in an action against the administrator, the widow and the heirs-at-law of a deceased mortgagor, the action being upon the covenant in the mortgage; and to have it declared that the lands had been effectually partitioned between plaintiff and intestate. The plaintiff and intestate were tenants-in-common, but partitioned, and intestate made a mortgage on his half, which is now sued on.

On behalf of the widow and the heirs-at-law it was argued that as more than ten years had elapsed since the last payment of interest, the Statute of Limitations, R.S.O., c. 111, s. 23, barred the action both as to principal and interest, the mortgage containing the usual acceleration clause. In support of this *Hemp v. Garland*, 4 A. & E. (N.S.) 519, and *Reeves v. Butcher*, (1891) 2 Q.B. 509, were referred to. It was admitted that the case of *Allan v. McTavish*, 2 A.R. 278, was against this view, but it was argued that this case having been decided on the Act of 1877, which is amended in R.S.O., 1887, is not now law.

On behalf of the widow it was argued that she was entitled to one-sixth of each half of the land as dower.

For the plaintiff it was contended that the case is governed by R.S.O., c. 60, s. 1, being an action on a specialty, and not an action to recover "land or rent," under R.S.O., c. 111, s. 23, and that therefore the period within which action must be brought is twenty years. As to the widow's dower it was argued that the partition was a complete conveyance of the husband's interest in the half taken by the intestate, and that the widow had therefore no dower in that half.

Held, that the widow was clearly only entitled to dower in the divided half of the land to which her husband became entitled.

Held, that the plaintiff's claim upon the covenant was not barred by ten