

MORTGAGE—SALE BY FIRST MORTGAGEE—SURPLUS PROCEEDS OF SALE—CLAIM BY SECOND MORTGAGEE—MORE THAN SIX YEARS' ARREARS OF INTEREST DUE SECOND MORTGAGEE—REAL PROPERTY LIMITATIONS ACT, 1833 (3-4 W. 4, c. 27), s. 42 (R.S.O., c. 75, s. 18).

*In re Thomson Thomson v. Bruty* (1920), 1 Ch. 508. In this case a first mortgagee had sold the mortgaged premises and, after the satisfaction of his claim, a surplus remained in his hands, and the question at issue was as to the rights of a second mortgagee to whom there was due more than six years' arrears of interest. The second mortgagee claimed as much of the surplus as was necessary to satisfy his claim including the arrears of interest; and the first mortgagee contended that he was only entitled to six years' arrears of interest, under the Real Property Limitations Act, 1833 (3-4 W. 4, ch. 27), sec. 42 (R.S.O., ch. 75, sec. 18). Eve, J., who heard the application held that it was not in the nature of an action to recover money charged on land, and was therefore not within sec. 42 (R.S.O., ch. 75, sec. 18); and though the second mortgagee's right to recover more than six years' arrears of interest by action might be barred, yet his claim was not extinguished, and that the application was a proceeding to compel the execution of a trust, and he held that the second mortgagee was entitled to the surplus.

WILL—DEVISE WITHOUT WORDS OF LIMITATION—GIFT OVER AT DEATH OF DEVISEE "WITHOUT AN HEIR"—GIFT OVER TO POSSIBLE COLLATERAL HEIR—ESTATE IN FEE SIMPLE WITH EXECUTORY GIFT OVER—WILLS ACT 1837 (1 VICT. c. 26) ss. 28, 29—(R.S.O. c. 120, ss. 31, 33.)

*In re Thomas Vivian v. Vivian* (1920), 1 Ch. 515. By the will in question in this case the testator devised lands to "Walter Vivian and at his death without an heir to Anthony Vivian and his heirs." Anthony being a nephew of Walter. Eve, J., who was called on to construe this will held that under the Wills Act, 1837, sec. 28 the devise to Walter without words of limitation, had the effect of giving him a fee simple, and that the effect of the gift over to a person who might be his collateral heir, was to create an executory gift over in the event of Walter dying without an heir of his body, otherwise no effect could be given to the gift over. And he held that sec. 29 (R.S.O. ch. 75, sec. 33) had not the effect of making the estate devised to Walter an estate tail, as was claimed on his behalf.