

LENNOX, J.

MAY 22ND, 1915.

COLE v. COLE.

Assignments and Preferences—Assignment for Benefit of Creditors—Right of Secured Creditor to Rank upon Estate in Hands of Assignee—Notice of Contestation—Forfeiture—Assignments and Preferences Act, R.S.O. 1914 ch. 134, secs. 25, 26, 27.

The plaintiff, as assignee for the benefit of creditors of one Paisley, brought this action against himself, as assignee for the benefit of creditors of the Carleton Hotel Company, for a declaration of the rights of the Paisley estate as a creditor of the hotel company's estate.

Cole, purporting to act under the Assignments and Preferences Act, R.S.O. 1914 ch. 134, sec. 25 (4) and sec. 26 (1), furnished an affidavit proving a total indebtedness of the company to the Paisley estate of \$17,215, and valued the security held by the company (a chattel mortgage) at \$13,000.

Cole, as assignee of the company, evidently intending to act under sec. 27, gave the Paisley estate notice of contestation, and by the notice purported to impose upon the Paisley estate the obligation of bringing an action within 30 days upon pain of forfeiting its claim to rank upon the estate of the company: sec. 27 (2), (3).

The action was tried without a jury at Ottawa.

R. G. Code, K.C., for the plaintiff.

H. P. Hill, for the defendant.

LENNOX, J., said that the defendant had misconceived the meaning of sec. 27. It is a penal provision, must be construed strictly, and is not aimed at the forfeiture of a security, but is intended to secure the speedy determination of the right to rank and vote as a creditor and share in the distribution of assets, and to authorise a contestation of the indebtedness in whole or in part. As inducing a forfeiture the notice had no effect; but it was a fairly clear notice that a substantial part of the plaintiff's alleged rights was in dispute—it amounted to an assertion that the plaintiff must rank as an unsecured creditor for his total claim.

The plaintiff may have a judgment declaring that the de-