

The appeal was heard in the Weekly Court at Ottawa.

T. A. Beament, for the appellants.

J. F. Smellie, for the plaintiffs.

J. F. Orde, K.C., for the defendants Kirby & Co. and others.

W. D. Hogg, K.C., for the defendants Hughes and Owen.

BOYD, C.:—The moneys to be distributed in this case were made available for the satisfaction of creditors and incumbrancers by the intervention of the Court in a suit to have a transfer of the property (land) declared void as to creditors. The land was sold subject to the claims of prior mortgagees—prior, that is, to the date of the first execution. The proceeds of the sale are to be distributed among those entitled according to their priorities. Those entitled may be classified thus: first in time, execution creditors having charges on the land; second, the claim of La Banque Nationale under a subsequent mortgage; thirdly, a group of creditors whose executions are later in date than this mortgage; fourthly, another later mortgage to one Douglas and another to one Bickell; fifthly, another group, still later in date, of execution creditors; then, a fourth subsequent mortgage to the Traders Bank; and, lastly, another group of creditors whose executions are in the hands of the Sheriff. The amount realised by the sale is enough to pay in full the first group of executions, also the bank mortgage, and probably the next group of execution creditors. The Master has in this way settled the priorities and the manner of payment. It is objected on the appeal that the Master should have followed the directions given to Sheriffs in the Creditors' Relief Act, R.S.O. 1914 ch. 81, sec. 33, sub-secs. 11 and 12. The meaning imputed to that statute is that the groups of execution creditors should be gathered in one scheme of distribution (irrespective of the different mortgages) and the proceeds of the sale divided ratably among all as on an equal footing. The result would thus probably be that the bank mortgage would be paid in full and the execution creditors prior to this mortgage would receive a fraction of their charges. One obvious answer to this is, that the first execution creditors are prior to that mortgage, and the second execution creditors are subsequent to that mortgage, and so have their charge on a different estate in the land, lessened in value by the amount of the mortgage.

The Act does not appear to contemplate such a state of things as here exists: a succession of mortgages registered at different dates with groups of executions in the intervals between the different mortgages. The effect of the Act appears to be to pay