

The question which arose was a novel one—whether the bringing and the prosecution so far of the foreclosure action was an irrevocable election so to enforce or realise the mortgage security.

Reference to secs. 25 (4) and 27 of the Assignments and Preferences Act.

The fact of an action to foreclose having being begun and prosecuted is not *per se* sufficient to debar the mortgagee from bringing in the property and dealing with it under the Act, for thereby the position of affairs as to the assets will be the same as if no action had been begun. All that is now claimed is what is due under the mortgage, with interest and taxes, and the tendency of the action may be regarded as negligible.

As a term of relief, the mortgage action should be dismissed as against the assignees, but without costs. The judgment should declare that the plaintiff is entitled to rank upon the estate in the defendant's hands, and that his claim is to be dealt with by the defendant having regard to the provisions of the Act, sec. 25 (4).

The plaintiff should be paid his costs of the action by the defendant, but without prejudice to the amount thereof being recouped and the defendant's own costs being paid out of the assets: *Grant v. West* (1896), 23 A.R. 533, 540.

In *re Hurst* (1871), 31 U.C.R. 116, referred to.

SUTHERLAND, J.

JUNE 20TH, 1916.

RE ELLIOTT.

Will—Construction—Bequest of Farm Stock, Implements, and Household Furniture for Life—Not Articles quæ ipso Usu Consumuntur—Life Estate—Proceeds of Sale of Farm—Division among Relatives—Residuary Clause—Money Deposited in Bank—Joint Account—Survivorship.

Motion by the executors of Forbes Elliott, deceased, for an order determining certain questions arising on the will of the deceased.

The motion was heard in the Weekly Court at Toronto.

J. Gilchrist, for the executors.

J. H. Moss, K.C., for Mary A. G. Brown.

M. H. Ludwig, K.C., for James C. Rutherford and others.

M. Malone, for Mrs. Andrew Watson.