

there would be no absurdity, repugnance or inconsistency in such a construction of the will in question, the subsequent clause limiting the estates bequeathed by an executory devise over must be interpreted as referring to all the property devised to the testator's sons and daughters by all the preceding clauses of the will. (Decision of the Court of Appeal for Ontario, reversed.)

*Held*, further, that the gift over should be construed as having reference to failure of issue at the death of the first devisee, and that, thus, the first devisee took an estate in fee subject conditionally to the executory devise over.

Appeal allowed with costs.

*Chrysler, Q.C.*, for appellants.

*Blain & McFadden*, for respondents.

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18 May, 1896.

Ontario.]

RENNIE V. BLOCK.

*Chattel mortgage—Mortgagee in possession—Trespass—Negligence—Wilful default—Sale under powers—"Slaughter sale"—Practice—Parties—Agent of bailiff—Assignment for the benefit of creditors—Revocation of.*

A mortgagee in possession selling mortgaged goods which constituted the general stock of a trader, must conduct the sale in such a manner as a merchant would do in the ordinary management of his business, and where the goods were sold recklessly or improvidently, at unusually low prices and without taking proper precautions to prevent their being lost or damaged, the mortgagee if wilfully in default is liable to account not only for what he actually received but also for what he might have obtained for the goods, of which he was the trustee, had he acted with proper regard for the interest of the mortgagor.

Where the plaintiff's right of action accrues from the wilful default of a mortgagee in possession, the agent or bailiff acting for the mortgagee is not a proper party to be joined as a defendant in the suit.

After the commencement of the action the plaintiff made a general assignment of his estate for the benefit of his creditors, but at the first meeting of the creditors they all refused to execute or accept the benefits thereof, whereupon the assignee