

and chattels covered by the mortgage or the proceeds thereof have been received and not accounted for by the defendant, they must be accounted for and the proceeds thereof paid to the plaintiff; and there will be a reference to the Local Master at Ottawa to ascertain the amount, if the parties cannot agree.

The proceeds of the sale of the mortgaged assets, which have been paid into Court, pending action, will be paid out to the plaintiff.

In view of the circumstances, particularly of the insolvency of the mortgagor at the time the mortgage was made, and of the bill of sale later on made by Arthur to Alfred, who was and had been manager of Arthur's business, and had full knowledge of its financial condition, the net proceeds of the mortgaged assets will be applied, first, towards payment of the claims of Arthur's creditors, and then towards the payment of those of Alfred's creditors.

Owing to the form in which the first action was brought, I think that, instead of costs being awarded against him, the defendant should be paid out of the estate his costs down to the consolidation of the two actions; the plaintiff also to be entitled to costs of the action out of the estate. Costs of the reference are reserved until after the Master's report.

KELLY, J.

MAY 23RD, 1913.

*WYNNE v. DALBY.

Motor Vehicles Act—Person Injured by Motor Car—Liability of "Owner" under sec. 19—Purchaser of Vehicle—Unpaid Vendor Retaining Property in Vehicle—Person Employed by Purchaser—Breach of Statutory Duty—Secs. 6 (1) and 15—Finding of Jury.

Action for damages for injury to the plaintiff by a motor car driven by the defendant Dalby.

The action was tried before KELLY, J., and a jury, at Toronto.

J. P. MacGregor, for the plaintiff.

C. M. Garvey, for the defendants Dalby and Adams.

L. F. Heyd, K.C., for the other defendants.

*To be reported in the Ontario Law Reports.