

that they accepted title on the 1st November, 1910, and asked for a short delay, which was granted; that, before the sale could be completed, and on the 12th November, Madeline Kennedy registered a caution, which was set aside on the 2nd December, 1910, at a cost to the plaintiff; that on the 12th November, 1910, Robert Kennedy filed a caution, which was removed on the 9th December, at a cost to the plaintiff; that Gertrude Maud Foxwell registered a caution on the 8th December, which still stands; that the succession duty amounts to \$1,976.79, and the plaintiff has no funds to pay it; he claims interest from the Suydam Realty Company for the delay; and, if not, then from those who prevented the sale going through; he claims an order against the Suydam Realty Company to complete the sale and pay the balance of the purchase-money: he says that David Kennedy alleges that he, the executor, has no right to sell the land, and claims a lien thereon for an annuity left him by the said will; but that he (James), while admitting David's right to the annuity, claims the right to sell the land for the purposes of the estate, including paying David's annuity.

Robert Kennedy denies that the plaintiff is executor, and alleges that he has no right to sell the land; says that he (Robert) registered the caution to protect his own rights, and that the plaintiff has used the cash of the estate to pay his own solicitor, and to pay legacies, when he should have paid the succession duties.

To this there is a reply setting up an adjudication that Robert Kennedy had no interest in the land and an order vesting the lands in the plaintiff.

Madeline Kennedy denies the devise to the plaintiff; says that the entry of the plaintiff in the land titles office was by mistake and inadvertence; that the sale to the Suydam Realty Company is void; that she is entitled to a share in the proceeds of the sale of the land, and registered the caution to prevent a sale at a gross undervalue.

Upon this the plaintiff joins issue.

David Kennedy alleges that the lands belong to him and the other heirs at law of David Kennedy, deceased; that the sale is at a gross undervalue; that he has an annuity charged upon the lands, and the lands cannot be sold without his consent. He also sets up that the counterclaim should not be tried until the will be construed.

Upon this the plaintiff joins issue.

The Suydam Realty Company say that the plaintiff represented himself to be the owner in fee simple of the land; that