

Under rule 74 the executor might properly be sued on behalf of or representing the property or estate.

This rule is clear, that in the case of executor or trustee the persons ultimately entitled need not be joined in foreclosure proceedings.

In *Roberts v. Brooks*, 10 O. L. R. p. 395, in discussing the right of executors to sell, it was held, that the question there was not one under the Devolutions of Estates Act, because by the will express power was given to the executor to sell the entire estate.

Here, J. Breterwitz was the absolute owner of the entire property. By his will he devised the land in question to his wife for life, and then used the following words: "I direct that after the death of my said wife, my said executors shall sell said real estate, as soon as they conveniently can, and divide the proceeds thereof equally among all of my children." There is an absolute power to sell. Under these circumstances it is the same as if the property was devised to the executors with the usual power to sell, and divide the proceeds.

In *Emerson v. Humphries*, 15 P. R. 84, the head-note is:

"In an action upon a mortgage made by a deceased person, who died in 1889, payment, foreclosure and possession were claimed and the executors, to whom the real estate had been devised, were the only defendants."

Judgment for possession, *inter alia*, was recovered and a writ of possession placed in the sheriff's hands.

The widow, who was one of the executors, and the infant children of the deceased mortgagor, had an interest under the will in the mortgaged lands, and were in possession when the sheriff attempted to execute the writ.

The infants and the widow as their guardians, made claim to the possession as against the writ, based on the ground of the infants not having been made parties to the action:

Held, also, that the action, as regards the claim for possession, was properly constituted, and the infants were bound by the judgment against the executors.

No costs.