

and the costs of this application, on a similar affidavit being filed of non-payment; and the balance might then be paid out, in equal shares, to the six applicants. C. A. Seguin, for the applicants.

WHITE V. ANDERSON—LENNOX, J.—JUNE 23.

Money Lent—Action for, against Executrix of Debtor—Mortgage Security Accepted by Creditor—Right to Sue for Original Debt—Injunction against Removal of Assets from Ontario.—Action to recover money alleged to have been lent by the plaintiff to a deceased person, of whose will the defendant is executrix. The action was tried before the late Chief Justice of the King's Bench at Belleville, and was standing for judgment at the time of his death. Counsel for both parties requested LENNOX, J., to hear the case upon the pleadings and the evidence taken before the Chief Justice; and the pleadings and evidence were read and argument heard by him. LENNOX, J., in a written judgment, said that, whether the execution and delivery of mortgages were or were not arranged for or contemplated at the time of the loan, the plaintiff, having accepted and subsequently in many ways recognised the mortgages, could not now ignore or repudiate their existence. This, however, did not abridge or postpone the plaintiff's right to sue for the recovery of the money lent to the deceased, although it undoubtedly precluded him from claiming as for a simple contract debt. The learned Judge was not able to see why the plaintiff, suing in Ontario, should not be afforded the ordinary remedies available to a plaintiff suing in an Ontario Court in respect of a debt contracted and payable in Ontario, including the right to prevent assets in Ontario being removed while the debt remained unsatisfied. There were heavy arrears of taxes, but the mortgaged lands had not been put up for sale. It was said that they could be sold by private contract for nearly enough to satisfy the plaintiff's claim. Some arrangement might well be made between the parties; but, none having been made, as the learned Judge assumed, there should be judgment for the plaintiff against the defendant as executrix for the amount claimed, \$1,655.31 with interest, and for an injunction against removal of assets from Ontario, with costs of the action. F. E. O'Flynn, for the plaintiff. C. A. Butler, for the defendant.