

BOYD, C.:—I do not think that I should consider the cases put in in order to determine whether the plaintiff can recover on the covenants and refuse to be redeemed. When I looked at the record and my notes at the trial, I found that the defendant set up that the exercise of the power of sale by the first mortgagee was fraudulently procured by the plaintiff. But, on the opening examination of the plaintiff as his own witness, it was stated by his counsel that "the plaintiff admits the right to redeem as to the land and as to purchase by Croft," whereupon I ruled that the onus rested on the defendant to make out that he was not bound by his mortgage.

The course of the trial was stopped and changed by this admission, and I do not think that the plaintiff should be allowed now to recede from it. It is no hardship for the plaintiff to give up the land on being paid the mortgage and all his outlay.

This direction will be without costs to either party. The endorsement as made at the time on the record will stand.

BOYD, C.

DECEMBER 23RD, 1913.

RE BECKINGHAM.

Will—Construction—Specific Bequests not Exhausting Personality—Intestacy — Devise of Land—Contract for Sale of Land between Date of Will and Death of Testator—Sale not Completed by Payment—Conversion of Realty into Personality—Ademption of Devise—Purchase-money to be Received—Benefit of Next of Kin—Ascertainment of Next of Kin.

Motion by William Rogers for an order determining questions arising upon the will of Edwin Beckingham, deceased.

W. J. Code, for the applicant.

G. F. Henderson, K.C., for certain beneficiaries.

J. A. Hutcheson, K.C., for the executors.

BOYD, C.:—The testator's will is dated the 5th October, 1910, and he died on the 22nd of that month. He directs debts and funeral and testamentary expenses to be paid by his executors, and directs them to erect a head-stone over his