

*Held*, further, that the gift over should be construed as having reference to failure of issue at the death of the first devisee and that, thus, the first devisee took an estate in fee subject to the executory devise over.

Appeal allowed with costs.

*Chrysler*, Q.C., for appellants.

*Blain and McFadden*, for the respondents.

Ontario.]

[May 18.

RENNIE *v.* BLOCK.

*Chattel mortgage—Mortgagee in possession—Trespass—Negligence—Wilful default—Sale under powers—"Slaughter sale"—Practice—Parties—Agent of bailiff—Assignment for the benefit of creditors—Revocation of.*

A mortgagee in possession selling mortgaged goods, which constituted the general stock of a trader, must conduct the sale in such a manner as a merchant would do in the ordinary management of his business, and where the goods were sold recklessly or improvidently, at unusually low prices and without taking proper precautions to prevent them being lost or damaged, the mortgagee is wilfully in default and liable to account not only for what he actually received, but also for what he might have obtained for the goods, of which he was the trustee, had he acted with proper regard for the interest of the mortgagor.

Where the plaintiff's right of action accrues from the wilful default of a mortgagee in possession, the agent or bailiff acting for the mortgagee is not a proper party to be joined as a defendant in the suit.

After the commencement of the action the plaintiff made a general assignment of his estate for the benefit of his creditors, but at the first meeting of the creditors they all refused to execute or accept the benefits thereof, whereupon the assignee notified the plaintiff in writing of such refusal, and that the assignment had not been registered, but no formal reconveyance was made.

*Held*, that under the circumstances, the plaintiff was not precluded from proceeding with his action, and that the execution of a written instrument was not necessary to restore the assignor to his original rights.

Appeal allowed with costs.

*O'Donoghue*, Q.C., and *Meek* for appellant.

*Watson*, Q.C., for respondents.

Ontario.]

[June 6.

STEPHENS *v.* BOISSEAU.

*Debtor and creditor—Payment by debtor—Appropriation—Preference—R.S.O. (1887) c. 124.*

A trader carrying on business in two establishments mortgaged both stocks to B. as security for indorsements on a composition with his creditors and for advances in cash and goods to a fixed amount. The composition notes were made and indorsed by B. who made advances to an amount considerably over that stated in the mortgage. A few months after the mortgagor was in default for the advances and a portion of overdue notes, and there were some