

order for assignment of the mortgages and property by the plaintiffs, the defendants have no *locus standi* to object; and as to the addition of parties defendants could not be prejudiced thereby. The order also removed the stay of proceedings, but the present appellants cannot take exception to that part of it, and the rights of subsequent incumbrancers who are not before the court cannot be prejudiced by what was done in their absence.

Held, further, reversing the decision of the court below, that the order of the 4th of January, 1890, was a proper order. Whatever rights the lessee had acquired under the lease she had acquired as a purchaser for valuable consideration of the equity of redemption *pro tanto*, and the court should endeavour to preserve those rights.

Appeal dismissed as to order of 26th Dec., 1889, and allowed as to order of 4th Jan., 1890.

Ross, Q.C., for appellant.

W. B. Ritchie for respondent.

British Columbia.]

CAMERON *v.* HARPER.

Executor—Action against—Legacy—Trust—Claim on assets—Charge on realty.

T.H. and his brother were partners in business, and the latter having died T.H. became by will his executor and residuary legatee. A legacy was left by the will to E.H., part of which was paid, and judgment recovered against the executor for the balance. T.H. having encumbered both his own share of the property and that devised to him, one of his creditors and a mortgagee of the property obtained judgment against him and procured the appointment of receivers of his estate. E. H. then brought an action to have it declared that his judgment for the balance of his legacy was a charge upon the monies in the receiver's hands in priority to the personal creditors of T.H.

Held, affirming the judgment of the court below, that it having been established that the monies held by the receivers were assets of the testator's or the proceeds thereof, E.H. was entitled to priority of payment though his judgment was registered after those of the other creditors.

Held, also, that the legacy of E.H. was a charge upon the realty of the testator, the resi-

duary devise being of "the balance and remainder of the property and of any estate" of the testator, and the words "property" and "estate" being sufficient to pass realty. This charge upon realty operated against the mortgagees, who were shown to have had notice of the will.

Robinson, Q.C., for the appellants.

S. H. Blake, Q.C., for the respondents.

EXCHEQUER COURT OF CANADA

TORONTO ADMIRALTY DISTRICT.

(Noted for THE CANADA LAW JOURNAL.)

McDOUGALL, LOCAL J.]

[Sept. 1.

"THE JESSIE STEWART."

Jurisdiction—Action to recover seaman's wages less than \$200—Agreement to sell vessel—Purchaser under agreement insolvent—Agreement not registered—Inland Waters Seaman's Act, s. 44.

Action brought for \$83.60, seaman's wages. On a motion to dismiss the action it was shown that the registered owner, Joseph Adamson, had in the year 1887 sold the vessel to John Marks and Frederick Stoner, the latter a brother of the plaintiff, the agreement stipulating that the vessel was to remain in the name and under the control of Adamson until the full amount of the purchase money, interest, and charges shall have been paid; and in the event of the terms of the contract not being fulfilled Adamson was entitled to take possession, Marks and Stoner forfeiting absolutely all claims they might have on or to the ship or for moneys paid in respect to the contract. For some two or three years Marks and Stoner lived up to the terms of the agreement; but for over a year, and until immediately before the arrest of the vessel, they had neglected to perform certain duties imposed upon them, and Adamson took possession.

Held, that under these circumstances the property in the vessel had not passed to the vendors and that the agreement was not a bill of sale within the meaning of the Act, and therefore this court has no jurisdiction. *Held*, also, that if summary proceedings had been taken as provided by the Inland Waters Seaman's Act, a direction might have been made to provide for the realization of the plaintiff's