

Counsel for the Official Guardian, on behalf of the infant children of the settlor and of his unascertained heirs, took the objection that no such power of revocation as that claimed by the vendor could be given effect to upon an application under the Vendors and Purchasers Act. This objection must prevail. Whether, under the provisions of Rule 602, the Court could make an order binding upon an unascertained class, was open to serious doubt. But in this matter the Court was asked to pronounce what in effect would be a declaratory judgment—a judgment declaring that the vendor could effectively revoke an instrument which appeared as a cloud upon his title, and in which no power of revocation was reserved, and, by doing so, cut out certain unascertained persons who might otherwise be entitled. No such power was intended to be conferred upon the Court by the Vendors and Purchasers Act, or by Rule 602; and, in the absence of any authority that any such power is conferred, no such order can be made here, but the vendor must resort to some other remedy, probably an action commenced by writ, for the relief which he requires in order to make title. That he will meet with difficulties in bringing that action against an unascertained class, is obvious, but the difficulties are of his own creation.

For these reasons, it should be declared that the vendor has failed to remove the objection raised by the purchaser, and is unable at present to convey to the purchaser a good title to the lands in question.

The vendor must pay the costs of the purchaser and also of the Official Guardian.

---

MIDDLETON, J.

SEPTEMBER 9TH, 1920.

RE BUTTERFIELD AND WAUGH.

*Mortgage—Discharge—Effect of—Registry Act, R.S.O. 1914 ch. 124, sec. 67—Conveyance of Legal Estate to Person Entitled in Equity—Second Mortgage Paid off but not Discharged.*

An application by a vendor of land, under the Vendors and Purchasers Act, for an order declaring the purchaser's objection to the title invalid and that the vendor had shewn a good title.

The motion was heard in the Weekly Court, Toronto.

G. H. Sedgewick, for the vendor.

G. P. McHugh, for the purchaser.