

LENNOX, J.

JUNE 4TH, 1919.

RE RUSSELL AND BILLING.

*Vendor and Purchaser—Title to Land—Sale by Mortgage—
Evidence—Possession—Rights of Mortgagor—Limitations Act
—Application under Vendors and Purchasers' Act—Costs.*

An application by a vendor of land, under the Vendors and Purchasers Act, for an order declaring that he had shewn a good marketable title to the land.

The motion was heard in the Weekly Court, Toronto.
E. D. Armour, K.C., for the vendor.
W. A. McMaster, for the purchaser.

LENNOX, J., in a written judgment, said that the devolution of the paper-title to the lands in question was not traced or shewn, but the vendor evidently derived title from William S. Grimshaw, who purchased from Sarah McLeod, and obtained a deed of the property on the 15th October, 1914. This deed (36271) was not produced, but was referred to in the requisitions as purporting to be made in pursuance of powers contained in a mortgage of the land in question. The mortgage was made in 1889, and a sale was attempted in 1892. It was not pretended that the proceedings for sale were faulty, defective, or irregular. Just what they were was said to be of record in the proper registry office. It was argued for the vendor that deed No. 36271 could be relied on as the deed of either an absolute owner or mortgagor, notwithstanding the recitals, inasmuch as it contained the word "grant" and equivalent terms—perhaps rather inadequately expressed—and, as this statement as to the form of the deed was not questioned, it should be accepted: and the deed should be held to operate as contended for.

The property was not built on until 1914, but the declaration of James B. McLeod established that from 1892 until 1914 his mother was in possession of the property in the way that unremunerative city properties are almost universally held, that is, she was assessed, and assumed and discharged all the obligations—absolute or qualified—incident to ownership; that she exercised the right of selling gravel etc.; and that her title was not disputed by anybody. This state of facts was not questioned. Having regard to the character and condition of the property, she must be considered as having been in possession continuously from about 1892 until the time she sold; and, long before 1914, the mortgagor's rights were barred.