

contained in the mortgage to pay taxes, and to repair, and not to suffer or permit any other lien, charge or mortgage on the mortgaged property, etc. Taxes were then in arrear; evidence was given tending to shew a breach of the covenant for repair; and plaintiffs argued that the making of the sale and transfer by the defendants the Brantford Street Railway Company to the defendants the Grand Valley Railway Company, and the making of the mortgage subsequently by the latter company, constituted a breach of the covenant not to suffer or permit any other lien, charge or mortgage on the mortgaged property; and further that the legal estate in the mortgaged properties and assets being in them as mortgagees gave them the right to possession on breach of any of the covenants.

There is no express provision in the mortgage entitling the plaintiffs either to possession or to a receiver on the non-performance or non-observance of covenants. On the contrary, it is expressly provided that until default shall be made in payment of the interest on the bonds or debentures or some part thereof, the grantors (the defendants the Brantford Street Railway Company), and their assigns shall be suffered and permitted "to hold, use, occupy, possess, manage, operate, maintain and enjoy the said property," etc.

No authority was cited in support of this proposition put forward by the plaintiffs, and I have been unable to find any such authority. A breach of the covenants, did not, in my opinion, entitle the plaintiffs to possession or to have a receiver appointed. Their remedy is on the covenants themselves.

Apart from this, the plaintiffs further contended that under the provisions of sec. 6 of 10 Edw. VII., ch. 51, there was implied in the mortgage a covenant that "on default, the mortgagees shall have quiet possession of the said lands free from all encumbrances," and that as the default referred to in that Act includes default in payment of taxes, and there being such default in this case, they are entitled to possession.

In the case of a conveyance by way of mortgage this covenant on the part of the person who conveys is implied only, as stated in clause (a) of sec. 6, when that person "is expressed to convey as beneficial owner."