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McCUAIG v. BARBER.

[Nov. 21, 1898.]

*Mortgage—Assignment of equity—Covenant of indemnity—Assignment of covenant—Right of mortgagee on covenant in mortgage.*

C. executed a mortgage on his lands in favour of B. with the usual covenant for payment. He afterwards sold the equity of redemption to D., who covenanted to pay off the mortgage and indemnify C. against all costs and damages in connection therewith. This covenant of D. was assigned to the mortgagee. D. then sold the lands, subject to the mortgage, in three parcels, each of the purchasers assuming payment of his proportion of the mortgage debt, and he assigned the three respective covenants to the mortgagee, who agreed not to make any claim for the said mortgage money against D. until he had exhausted his remedies against the said three purchasers and against the lands. The mortgagee having brought an action against C. on his covenant in the mortgage,

*Held*, reversing the judgment of the Court of Appeal (24 Ont. App. R. 492), that the mortgagee, being the sole owner of the covenant of D., which the mortgagor assigned to him as collateral security, had so dealt with it as to divest herself of power to restore it to the mortgagor unimpaired, and the extent to which it was impaired could only be determined by exhaustion of the remedies provided for in the agreement between the mortgagee and D. The mortgagee, therefore, had no present right of action on the covenant in the mortgage.

*Aylesworth*, Q.C., for appellant. *W. H. Irving*, for respondent.

Que.]

ROBERTS v. HAWKINS.

[Dec. 14, 1898.]

*Negligence—Trespasser—Dangerous way—Warning—Imprudence.*

A cow-boy aboard a ship on the eve of departure from the Port of Montreal was injured by the falling of a derrick then in use which had been insecurely fastened. He was not at the time engaged in the performance of any duty, and, although he had been warned to "stand from under," he had not moved away from the dangerous position he was occupying.

*Held*, reversing the decisions of both Courts below, that the boy's imprudence was not merely contributory negligence, but constituted the principal and immediate cause of the accident, and that, under the circumstances, neither the master nor the owners of the ship could be held responsible for damages on account of the injuries he received.

*Macmaster*, Q.C., and *Peers Davidson*, for appellants. *Geoffrion*, Q.C., and *J. M. Ferguson*, for respondents.