

## REPORTS AND NOTES OF CASES.

## Dominion of Canada.

## SUPREME COURT.

Man.] SMITH v. NATIONAL TRUST CO. [March 21.

*Adverse possession—Mortgagee's possession against mortgagor—Torrens system—Statutory rights—Power of sale—Transfer—Variation in form—Special covenants in mortgage.*

Appeal from Court of Appeal, Manitoba. See 47 C.L.J. p. 311.

*Held*, 1. The title of a registered owner of land registered under the Torrens system or new system of registration in Manitoba is not extinguished by adverse possession of the land held by his mortgagee and persons claiming under him for the statutory period which by R.M.S. 1902, c. 100, s. 20, is applicable to lands not so registered. Compare s. 29 of the Ontario Land Titles Act, 1 Geo. V. c. 28; and see *Belize Estate v. Quilter*, [1897] A.C. 367.

2. While at common law the rights and powers of a mortgagee of land are incident to the legal or equitable estate vested in him as mortgagee, the statutory mortgage under the Torrens or "New System" registry law in Manitoba, R.S.M. 1902, c. 148, does not vest any estate in the lands in the mortgagee, but takes effect as a security only, with statutory powers for enforcement; the mortgagee's rights and powers are consequently dependent directly upon the statutory provisions, and any additional stipulations in a mortgage made under that statute, which purport to authorize the mortgagee or his assigns to sell the lands, are not effective to pass the registered title merely on a transfer by the mortgagee in purported exercise of the conventional power of sale without the judgment of a Court or the compliance with the statutory proceedings for enforcing the security. *Smith v. National Trust Co.*, 20 Man. R. 522, affirmed.

3. Where real property is mortgaged by an instrument executed in accordance with the Real Property Act, R.S.M. 1902, c. 148, known as the Torrens or "New System" registry law it