

establishing that they are not engaged in espionage, etc., before allowing them the protection of the law; or, in other words, compelling them to prove their innocence. I think it is for those who assert such inabilities in the person affected, to prove them.

I see nothing in the War Measures Act, 1914, to justify the limitation which the same learned Judge seems disposed to place upon the "protection of the law" mentioned in the Proclamation, namely, that it may well refer only to police protection.

There is much force in the plea set up by Shylock,—

You take my life,

When you do take the means whereby I live.

I think the Proclamation was clearly intended as an assurance to Germans and Austro-Hungarians living in Canada that their rights would be respected and that they should have the protection of the law, so long as they quietly pursued their ordinary avocations. I agree entirely with the opinion expressed by Gregory, J., in the *Topay* case.

For these reasons, this motion must be dismissed with costs.

Motion dismissed.

SETTER v. THE REGISTRAR.

Alberta Supreme Court, Harvey, C.J. May 26, 1914.

- I. LAND TITLES (TORRENS SYSTEM) (§ VIII—80)—CAVEAT—"ASSURANCE FUND"—ERROR IN RECORDING CAVEAT—UNREGISTERED MORTGAGEE'S RIGHT TO COMPENSATION OUT OF "ASSURANCE FUND," HOW LIMITED.

Compensation is authorized out of the "Assurance Fund" under sec. 108 of the Land Titles Act, Alta., only where a certificate of title has been granted in respect of the land or interest in land of which the claimant has been deprived; and inasmuch as certificates are not granted under that Act to mortgagees to shew their interests, a mortgagee, or caveator under an unregistered mortgage, can obtain no compensation from the Assurance Fund for loss sustained through an error of the Land Titles office in recording the caveat against the wrong lot.

ACTION by an unregistered mortgagee against the Registrar as nominal defendant claiming compensation out of the "Assurance Fund" under Land Titles Act, Alberta, where the mortgagee's caveat had been ineffective through the inadvertence of the Land Titles Office.

The action was dismissed.

MAN.
—
K. B.
—
PESCOVITCH
v.
WESTERN
CANADA
FLOUR
MILLS CO.
—
Galt, J.

ALTA.
—
S. C.

Statement