

# The Ontario Weekly Notes

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No. 36.

HIGH COURT OF JUSTICE.

RIDDELL, J.

MAY 15TH, 1911.

STANDARD REALTY CO. v. NICHOLSON.

*Mortgage—Mortgagor's Wife Joining in Covenant to Pay—Assignment by Mortgagor for Benefit of Creditors—Conveyance under Power of Sale—Action for Possession—Defence that Wife Entitled to Redeem—Tender on Behalf of Wife as Doweress—As Entitled to Redeem—Rights of Wife as Doweress—As Surety—Binding Contract with Purchaser before Offer to Redeem—Receipt Signed by Agent—Statute of Frauds—Rights of Mortgagor after F.O.F.—After Exercise of Power of Sale.*

Action by mortgagees to recover possession of lands.

J. F. McGillivray, K.C., for the plaintiffs.

R. M. Dennistoun, K.C., for the defendants.

RIDDELL, J.:—Murdoch Nicholson, a merchant in Kenora (then Rat Portage), and his wife in 1894 mortgaged to the Hamilton Provident & Loan Society his land, Lot 4, Block No. 1, for \$3,000 and interest. While both he and his wife are made mortgagors, and both covenant, a clause is to be found in the indenture: "And the said Kittie Nicholson, the wife of the mortgagor Murdoch Nicholson, hereby bars her dower in the said lands." This mortgage contained a special power of sale, the form of which need not be here considered. In 1902 this mortgage was assigned to Jacob Hose. In 1894 the same property was mortgaged to Jacob Hose for \$800. On the 1st March, 1910, Murdoch Nicholson made an assignment for the benefit of his creditors to Norman L. Martin. By conveyance made the 7th June, 1911, purporting to have been made under the power of sale under the mortgage first mentioned, the administratrix of Jacob Hose, his widow, conveyed to the Standard Realty Co. Limited for \$6,700, the amount owing upon the mortgages being,