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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

APRIL 13TH, 1917.

\*NEVEREN v. WRIGHT.

*Mortgage—Covenant for Payment—Exchange of Properties—Agreement—Liability for Proportionate Part of Prior Mortgage—Covenant of Mortgagees to Protect Mortgagor—Separate and Distinct Covenants—Assignment of Mortgage—Notice of Sufficiency—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 49—Assignment by Plaintiff and Reassignment pendente Lite—Rule 300—Abatement—Failure to Obtain Order to Proceed—Addition of Parties.*

Appeal by the defendant from the judgment of KELLY, J., 11 O.W.N. 409.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

W. J. Elliott and J. J. Greenan, for the appellant.

J. M. Ferguson, for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that if the mortgage transaction upon which alone this action was based were separated (as it should be) from the somewhat complicated transaction between the same parties which resulted in an exchange of lands, this case became simple. The mortgagees lent to the defendant the moneys secured by the mortgage; the mortgage was given and taken for the separate and sole purpose of securing the repayment of that loan. The exchange of lands would not have taken place but for the loan; but that could not

\* This case and all others so marked to be reported in the Ontario Law Reports.

14—12 o.w.n.