

J. Brown being now the owner of the mortgaged lands subject to the mortgage. In support of the motion, an affidavit of the applicant's agent was filed, from which it appeared that no principal had been paid on account of the mortgage since November, 1913, and that there was now due for principal \$2,150, the whole of which became payable on the 15th November, 1917; that the property was deteriorating in value; and was not worth more than \$3,100.

J. F. Edgar, for the plaintiff.
L. C. Smith, for the defendant.

ROSE, J., in a written memorandum, said that the applicant should have leave to proceed with an action for foreclosure, unless within one month Brown should pay \$250 on account of principal, together with the costs of the motion, fixed at \$20, and agree that interest hereafter should be at the rate of 7 per cent. per annum.

If the above-mentioned sums should be paid, the mortgagee might renew this motion at any time after the 15th November, 1918.

SUTHERLAND, J.

JUNE 4TH, 1918.

*FERGUSON v. EYER.

Sale of Goods—Contract—Lumber in Yard of Vendor—Property Passing to Purchaser—Destruction of Goods by Fire—Risk of Purchaser—Insurance Moneys Paid to Vendor—Cheque Given for Price of Lumber—Payment Stopped—Action on Cheque—Defences—Counterclaim—Negligence in Causing Fire—Warehouse Receipt—Bailment—Degree of Care Required from Bailee—Evidence—Cause of Fire—Accounting for Insurance Moneys—Undertaking of Vendor.

Action to recover the amount of a cheque drawn by the defendant upon a bank, in favour of the plaintiffs, for \$61,998.97.

The cheque was dated the 27th June, 1910, and was given in payment for the plaintiffs' "cut of white pine lumber," sold by the plaintiffs to the defendant upon the terms contained in a written agreement of the 14th June, 1910.

The action was commenced in November, 1910; the trial was delayed for unavoidable reasons.