

## HIGH COURT DIVISION.

MIDDLETON, J.

MAY 16TH, 1916.

\*ANSELL v. BRADLEY.

*Mortgage—Exercise of Power of Sale—Notice of Sale—Absence of Signature—Fatal Defect—Absence of Address—Service on Mortgagor—Sale Set aside—Rights of Purchaser against Mortgagee.*

Action to set aside a sale, by the defendant Bradley to the defendant Eckhardt, of land mortgaged by the plaintiff to the defendant Bradley, under the power of sale contained in the mortgage-deed.

The power of sale was in the statutory form—the mortgagee on default for one month may on one month's notice enter on and lease or sell the mortgaged land. The extended form enables the power to be exercised "after giving written notice to the said mortgagor," etc.

The defendant Bradley served written notice on the plaintiff, beginning "I hereby require payment," etc., and concluding, "unless payment is made by the 16th December, 1914, I shall sell the property comprised in the said mortgage." In the body of the notice, the mortgage was sufficiently recited, the names of the mortgagor and mortgagee and the date of registration being given; but there was nothing in the notice to shew that it was given by the mortgagee, not was it addressed to the mortgagor; and there was no signature to it.

The action was tried without a jury at Toronto.

S. H. Bradford, K.C., for the plaintiff.

T. P. Galt, K.C., for the defendant Bradley.

G. H. Watson, K.C., for the defendant Eckhardt.

MIDDLETON, J., after setting out the facts in a written opinion, said that, as the notice was given to the plaintiff, the circumstance that it was not addressed to her, was not fatal: *Doe ex dem. Mathewson v. Wright* (1801), 4 Esp. 5.

But the absence of the signature of the mortgagee was fatal: it is not essential that the signature should appear at the foot or end of the notice, but it is essential that the identity of the person giving the notice should in some way sufficiently appear in the notice itself, and that the notice should be a completed, and not an obviously incomplete, document.

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