

SHAVER v. YOUNG—SUTHERLAND, J.—MARCH 3.

Mortgage—Action on Personal Covenant for Payment by Mortgagee Described as “Trustee”—Descriptive Word not Limiting Personal Liability—Mortgage Made as Part of Transaction concerning an Exchange of Properties—Defence Based on Alleged Misrepresentations—Failure to Prove.—Action upon a mortgage. The action arose out of an exchange of lands, the mortgage sued upon having been made by the defendant as part of the transaction, and having been assigned to the plaintiff by the mortgagee, Gertrude Pasternack. The exchange was made by and between Gertrude Pasternack, the owner of vacant lots in or near the town of Bassano, Alberta, and the Glen Eden Securities Company Limited, the owner of two parcels of land in the city of Toronto. In the exchange, there was a difference in the values placed upon the properties, after deducting the incumbrances, in favour of Gertrude Pasternack, and a mortgage in her favour was executed by the defendant, acting for the company, upon the Bassano lots, for \$3,650 and interest. This was the mortgage assigned to the plaintiff and now sued upon. The defendant was described therein as “physician, trustee,” and he denied personal liability; but the learned Judge held that, having regard to the terms of the mortgage, and to the fact that no provision was made therein to protect the defendant from the personal covenant for payment therein contained, the word “trustee” must be regarded as merely descriptive, and not as limiting the personal liability of the defendant. The defendant also alleged that representations made by Gertrude Pasternack and her agents as to the value of the Bassano lots were untrue, and that the agreement was made by him on the faith of those representations. The learned Judge finds against the defendant on the defence of misrepresentations. Judgment for the plaintiff for the amount claimed with costs. R. McKay, K.C., for the plaintiff. W. E. Raney, K.C., for the defendant.