

The costs incurred in a sale ought not to be charged against the mortgagee's interest, but should come out of the sum admitted as the increased selling value, in this case \$300.

*Appeal allowed.*

MIDDLETON, J.

MARCH 18TH, 1916.

O'CONNOR v. CHARLESON.

*Vendor and Purchaser—Contract for Sale of Land—Apprehended Proceedings to Enforce Payment of Instalment of Principal of Purchase-money—Proceedings in Foreign Court for Purpose of Reaching Foreign Assets—Application of Mortgagors and Purchasers Relief Act, 1915.*

Motion by the plaintiff, purchaser, for an interim injunction restraining the defendant, vendor, from taking proceedings to enforce payment of certain principal money now past due under an agreement for the purchase of certain lands in the city of Ottawa.

The motion was heard in the Ottawa Weekly Court.

J. F. Orde, K.C., for the plaintiff.

H. Fisher, for the defendant.

MIDDLETON, J., said that the proceedings which the plaintiff apprehended were proceedings in the Courts of the Province of Quebec, where the plaintiff resides and owns property.

The action is based upon the theory that the Mortgagors and Purchasers Relief Act, 1915, 5 Geo. V. ch. 22 (O.), precludes a vendor who resides in Ontario from taking any action, even in Quebec, upon a contract, without the leave of an Ontario Court, where there is no default save in regard to an instalment of principal.

The fundamental difficulty is, that the Legislature of Ontario did not intend to interfere with any proceedings save those in this Province.

The whole frame of the statute, and particularly the provisions found in sec. 2(2), seems to indicate that proceedings in a foreign Court to reach foreign assets were never contemplated by the Legislature.

The motion should be turned into a motion for judgment, and a judgment pronounced dismissing the action with costs.