

TEETZEL, J.

OCTOBER 3RD, 1906.

WEEKLY COURT.

RE MUFFITT AND MULVIHILL.

Mortgage—Power of Sale—Notice of Exercising—Omission to Serve on Mortgagor and Wife—Conveyance of Equity of Redemption—Vendor and Purchaser—Objection to Title.

Motion by Charles Muffitt, vendor, for an order under the Vendors and Purchasers Act, declaring that the objection to the title of the vendor to certain lands in the city of Toronto made by the purchaser, on the ground that notice of exercising the power of sale contained in a mortgage drawn in pursuance of the Short Forms Act, should be served on the mortgagor and on his wife, notwithstanding the fact that the mortgagor had parted with his equity of redemption, and his wife released her dower to the purchaser of the equity, did not constitute a valid objection to the title.

W. B. Milliken, for vendor.

M. H. Ludwig, for purchaser.

TEETZEL, J.:— . . . I think the omission to serve notice of exercising the power of sale upon the mortgagor and his wife is no objection to the vendor's title. Both joined in a conveyance of all their interest in the equity of redemption before the mortgagee began proceedings under the power of sale. Irrespective of such conveyance, *Re Martin and Merritt*, 3 O. L. R. 284, decides that the mortgagor's wife need not be notified. That case and *Re Abbott and Medcalf*, 20 O. R. 299, are authorities for the proposition that the question upon whom the notice is to be served is to be determined according to the circumstances existing at the time notice is given. When the notice was given in this case the mortgagor had no interest whatever in the equity of redemption. By the conveyance he conveyed all his estate to the grantee, who then became entitled to all the rights incident to the equity of redemption, including the right of the mortgagor to notice of the mortgagee's intention to exercise his power of sale. To obtain title by foreclosure the