

SHIELDS v. SHIELDS.

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Ontario Supreme Court, Appellate Division, Meredith, C.J.O., Magee, Hodgins, and Ferguson, J.J.A. June 10, 1918.

S. C.

MORTGAGE (§ VI G—105)—ACTION BY MORTGAGEE FOR RECOVERY OF MORTGAGE-MONEYS AND FOR POSSESSION—PROCEEDINGS UNDER POWER OF SALE—MORTGAGES ACT, SEC. 29.

A mortgagee of lands, who has brought an action to recover the mortgage-moneys, and for possession of the mortgaged lands until paid, is not prevented from also taking proceedings under a power of sale contained in the mortgage-deed.

Section 29 of the Mortgages Act, R.S.O. 1914, ch. 112, has no application to such a case.

[*Stevens v. Theatres Limited*, [1903] 1 Ch. 857, distinguished.]

APPEAL from a judgment of Meredith, C.J.C.P. refusing an application by plaintiffs for an interim injunction restraining the defendant from proceeding to a sale of mortgaged lands under the power of sale contained in a mortgage-deed. Affirmed.

Statement

The order appealed from was as follows:—

MEREDITH, C.J.C.P.:—There is no law, that I am aware of, which prevents a mortgagee of lands, who has brought an action to recover the mortgage-moneys, and for possession of the mortgaged lands until paid, also taking proceedings under a power of sale contained in the mortgage. Why should there be any such law? There is nothing inconsistent in the two proceedings. Possession is needed if the sale be made: and the amount realised at the sale must be applied towards payment of the mortgage-debt. If enough be realised upon the sale, the claim upon the covenant to pay the mortgage-moneys is satisfied; if insufficient, the judgment is needed for the recovery of the amount unsatisfied.

The enactment which was at one time commonly called Solomon White's Act—now the Mortgages Act, sec. 29*—has no application to this case: it is not contended that it has: but several cases were relied upon by Mr. Lawr in support of the application: they were all, however, cases very different from this case. That

*Section 29 (1) of the Mortgages Act, R.S.O. 1914, ch. 112, is as follows:—
29.—(1) Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by such mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce such mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken unless and until an order permitting the same has been obtained . . . from a Judge of the Supreme Court.