

MIDDLETON, J.

JANUARY 9TH, 1920.

RE BROWN AND HOLMES.

Vendor and Purchaser—Agreement for Sale of Land—Objections to Title—Conveyance Made in 1890 to Trustees—Recital of Instrument of Even Date—Instrument not Produced—Constructive Notice—Registry Act—Mortgage Made by Trustees—Foreclosure—Title Made under—Breach of Trust—Statute of Limitations—Lapse of Time—Acquiescence—Application under Vendors and Purchasers Act.

Motion by a vendor of land, under the Vendors and Purchasers Act, for an order declaring the purchaser's objections to the title of the vendor invalid and that the title should be accepted.

The motion was heard in the Weekly Court, Toronto.

W. B. Cowan, for the vendor.

F. M. Gray, for the purchaser.

MIDDLETON, J., in a written judgment, said that on the 16th January, 1890, Kate Campbell, the then owner of the land now in question, conveyed it to A. A. Scott and two others as trustees, as security for certain promissory notes made by her husband, pursuant to an instrument of even date, probably a composition or extension agreement. The deed provided that, upon default of payment of the notes, the trustees might sell the land and pay the notes, and, if the notes were paid, the land, or such portion as might remain, was to be reconveyed to the grantor.

On the 3rd December, 1890, the trustees mortgaged the land to one Vansickle, the mortgage reciting that the existing mortgages were in default and the mortgagees were proceeding to foreclose, and this mortgage was for the purpose of paying off the existing mortgages.

These mortgages were discharged, but it turned out to be a mere postponement of the evil day, for the Vansickle mortgage fell into arrear, and Vansickle obtained a judgment and final order of foreclosure, under which the vendor-applicant made title.

Two objections were taken: (1) The production of the deed referred to in the recitals of the trust-deed was asked. (2) It was said that there was no power to mortgage—the Vansickle mortgage was a breach of trust.

The deed referred to could not be found. The objection was not well taken. Title was not made through this instrument, and, as there was only constructive notice, the Registry Act protected against any equity which might arise from anything