

The vendor's title was derived through one Pasternak, to whom the land was conveyed in 1903, by the mortgagee in a mortgage made in 1889, in the exercise of a power of sale contained in the mortgage-deed. In the power of sale it was provided that, if default in payment of any moneys secured by the mortgage continued for two months, the power might be exercised without notice; and also that no want of notice should invalidate a sale thereunder—the vendor alone should be responsible.

The mortgagee made a statutory declaration that he was in possession of the land and collected the rents thereof for at least five years before making the conveyance under the power, and that, at the date of that conveyance, default in payment of the moneys secured by the mortgage had continued for more than one year. This declaration was produced by the vendor; and a further declaration was offered to the effect that moneys had been paid on the mortgage within ten years of the date of the conveyance.

The motion was heard in the Weekly Court at Toronto.

A. Cohen, for the purchaser.

L. Davis, for the vendor.

SUTHERLAND, J., in a written judgment, said that the clause in the mortgage authorising the mortgagee to sell without notice if default in payment of the money secured by the mortgage continued for two months, and that, in case of sale without notice, such sale could not be invalidated, but the remedy should be against the vendor alone, precluded the necessity of any notice to the persons appearing in the registry office as interested in the property subsequent to the date of the mortgage. The purchaser could safely accept the title offered by the vendor, in so far as those persons were concerned. The objection to the title was sufficiently answered by the declaration produced and the declaration offered, when produced.

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FOSTER V. MACLEAN—SUTHERLAND, J., IN CHAMBERS—SEPT. 25.

*Appeal—Leave to Appeal from Order of Judge in Chambers—Rule 507—Discovery—Particulars.*] Motion by the defendants, under Rule 507, for leave to appeal from an order of BRITTON, J., in Chambers, 10 O.W.N. 457, allowing an appeal from an order of the Master in Chambers directing that the plaintiff should attend