

Chy. Div'l Court.]

[May 10.

BRITISH & CANADIAN LOAN COMPANY v. TEAR ET AL.

Mortgagor and mortgagee—Sale subject to mortgage—Implied covenant to pay off—Assignments of—Evidence to retract.

T. mortgaged certain lands to the plaintiffs and then sold them to L., subject to the mortgage, taking the amount of it into account as part of the purchase money, but did not take any covenant to pay it off. T. then, by an instrument in writing, assigned all his rights and remedies, and the benefit of all covenants, express or implied, he had against L. to the plaintiffs. The plaintiffs brought their action on the mortgage, and sought to recover against both T. and L.

On an appeal to the Divisional Court, it was

Held (affirming ROBERTSON, J.), that the implied covenant that L. should pay off the plaintiff's mortgage was assignable by T. to the plaintiffs.

Held, also (reversing ROBERTSON, J.), that L. should have been allowed to give evidence to show that at the time he purchased from T. he contracted that he should not be liable to pay the mortgage.

Aylesworth, Q.C., and Schoff for the appeal.

J. K. Kerr, Q.C., and G. W. Holmes, contra.

Chy. Div'l Court.]

[May 10.

MORSE v. LAMB.

Registry laws—Registrar's charges—On subdivision of township lots by registered plan.

The practice in the master's office in a foreclosure action to make it effectual is to add all parties who have any interest in the land, and in procuring a registrar's abstract for that purpose the registrar is entitled to charge a search on any lot shown in any plan or subdivision of the land, even where the mortgage sought to be purchased was in the original township lots, and the plan was registered subsequent to the mortgage, and without the mortgagee's consent.

Decision of ROBERTSON, J., reversed.

Shepley, Q.C., for the appeal.

Laidlaw, Q.C., contra.

Div'l Court.]

[May 10.

PARK v. WHITE ET AL.

Nuisance—Permanent or temporary—Property occupied by tenants—Injury to reversion.

In an action by the owner to restrain a nuisance of privy pits by an adjoining owner, in which it was contended that the nuisance, if any, was caused by the acts of the defendant's tenants,

Held (affirming MACMAHON, J.), that if the pits were so constructed that the constant user of them would necessarily result in the creation of a nuisance, if the defendant allowed them to remain in an unsanitary condition when she had the power to remedy the grievance, she was personally liable.