

filed subsequently to the making of the unregistered transfer, decreed to be a cloud upon his title; so likewise is entitled a person who, though he has received no actual transfer, is entitled to one under an enforceable agreement. affirmed 26 S. C. R. 282. To such an action the sheriff, against whom an injunction is asked to restrain proceedings upon the execution, is a proper party. Where in such an action the sheriff joined in, and set up the same defences as the execution creditor, he was ordered to pay the costs as well as the execution creditor. *Wilkie et al. v. Jellett et al.* (Ct. 1895), p. 133.

Territories Real Property Act

—*Omission of Registrar to Enter Memorial of Mortgage in Register—Subsequent Mortgagee Paying off Prior Mortgage—Subrogation—Laches—Effect of Memorial—Assurance Fund—Section 108—Costs—Several Issues—Divided Success.*—On the 26th September, 1899, one G. applied to the plaintiff for a loan of \$500, and executed a mortgage to him of the lands in question of which he was the owner. The plaintiff's advocates made search in the Registry Office on the 14th of October, and, ascertaining that the only encumbrance on the register was a mortgage to one P., registered the plaintiff's mortgage and a discharge of the other, which had been obtained on their undertaking to pay the amount due, and the Registrar endorsed memorials accordingly on the certificate of title, on receipt of which certificate the plaintiff's advocates paid the amount due to P., and advanced the balance to G. No other memorials appeared on the certificate at the time of the advance nor were the plaintiff's advocates aware of any other incumbrances, but there had in fact been filed with the registrar a mortgage from G. to the defendant B. for \$2,000, which had been entered in the day book only. Subsequently on an application to Maguire, J., under the T. R. P. Act, on behalf of the defendant B. by way of a summons to the Registrar and the plaintiff to show cause, it was held that the \$2,000 mortgage to B. had been registered within the meaning of the Act at the time of filing, and had priority over the plaintiff's mortgage, and an order was made to amend the memorials on the certificate accordingly. Then default having been made by G. in payment of the mortgage to

defendant B., the lands were offered for sale, and a foreclosure order obtained on the 15th September 1900, notice of application for which having been duly served on the plaintiff. Held that the plaintiff was entitled as against the defendant B. to be subrogated to the rights of P. in respect of the mortgage held by him and paid by the plaintiff, and to be entitled to a first mortgage upon the lands in question for the amount thereof with interest: so held, against the contention of the defendants that the question of the plaintiff's priority was *res judicata* either by the judgment of Maguire, J., or the foreclosure order. *Brown v. McLean*, 18 O. R. 533, and *Abell v. Morrison*, 19 O. R. 609, followed. Laches discussed. Held, also, that the endorsement on the certificate of title of the plaintiff's mortgage was equivalent to a certificate that there were no prior encumbrances affecting the land other than those appearing on the certificate, and that the plaintiff was entitled to be paid out of the Assurance Fund the balance of his claim with interest under sec. 108 of the Territories Real Property Act. It is unnecessary for the plaintiff, in order to recover against the Assurance Fund, to show that he has been deprived of any land or any interest therein by the mistake or omission of the registrar, it being sufficient if loss or damage is shewn. Nor is it necessary for the plaintiff to shew that he has been barred from all other remedies before proceeding under sec. 10; it is enough that his principal remedy has been barred. Section 108 discussed. *Oakden v. Gibbs*, 8 Vic. L. R. referred to. And held in a subsequent judgment as to costs that the plaintiff and the Registrar were both entitled to tax as against defendant B. the costs of the issue as to the right of subrogation, and the plaintiff against the Registrar the other costs of the action. *Morris v. Bentley*, (Scott, J., 1895), p. 254.

T. R. P. Act—Mortgage—Purchase Subject to Mortgage—Implied Covenant of Indemnity—Assignment of Implied Covenant—Survivorship of Joint Contractors.—The obligation, declared by the T. R. P. Acts 69, (a) to be implied in every instrument transferring any estate or interest in land under the provisions of that Act subject to mortgage or encumbrance, is assignable by the implied covenant to the original mortgagor. The implied covenant takes