

with \$325, the amount of the deficiency arising upon the realization of the Kerr mortgage.

The plaintiff sold the defendant a mill and accepted a mortgage made by one Kerr upon which there was \$1,200 due, in part payment.

The mortgage was assigned by instrument of 26th October, 1909, containing a covenant by the assignor (the defendant) "that the said mortgage is a good and valid security and that the sum of \$1,200 and interest as aforesaid is now owing and unpaid."

In the statement of claim this demand is based upon a covenant "that the said mortgage was a good security for the \$1,200 then due thereon."

The plaintiff also claims that the defendant represented "that the property covered by the mortgage was ample security for the amount due thereon, and the defendant relying upon the defendant's representation accepted the said mortgage at its face value of \$1,200."

The claim is then based on breach of representation and covenant.

The defendant denies any misrepresentation and any such covenant as that alleged.

The Master finds in the plaintiff's favour on the covenant, with an alternative finding that in any event there was "a verbal warranty given by the defendant on the treaty as to the mortgage."

The finding upon the covenant is based upon the statement that *Clarke v. Joselin*, 16 O.R. 68, determines that a covenant in the form quoted has the effect contended for by the plaintiff, and is to be preferred to the later case of *Agricultural Savings and Loan Co. v. Webb*, 15 O.L.R. 213, when it was not cited.

I cannot agree with the Master in his reading of *Clarke v. Joselin*, and think that *Agricultural v. Webb* determines the question. That case decides that this covenant does not mean that the mortgage is sufficient security for the debt, but only that the mortgage is valid in law. Apart from authority altogether this seems to me too plain for serious discussion.

The earlier case is, I think, in no way in conflict with this. There the claim was upon a similar covenant, the breach alleged being that the mortgage was not a good and valid security, because the mortgagor had no title, the lands having been sold under a power of sale in an earlier mortgage two months before the making of the mortgage in question.