

HON. MR. JUSTICE KELLY.

JULY 18TH, 1912.

NATIONAL TRUST CO. v. BRANTFORD ST. R.W. CO.,
GRAND VALLEY R.W. CO. & EDWARD B. STOCK-
DALE.

3 O. W. N. 1615.

Mortgage—Security for Bonds of Railway Company—Interest in Arrear — Acceleration of Payment of Principal — Action for Principal and Interest—Claim for Foreclosure and Possession—Payment of Interest Pendente Lite — Right to Possession — Receiver — Breaches of Covenants — Default in Payment of Taxes—10 Edw. VII. c. 51, s. 6—Costs.

KELLY, J., dismissed with costs the action of plaintiffs, trustees for certain bondholders, claiming the appointment of a receiver of the properties of defendant railway company on account of breach of certain covenants in the bond mortgage contained, holding that as the appointment of a receiver was not a remedy given plaintiffs by the terms of their mortgage, their only remedy was by action on the covenants.

A mortgage action tried at Toronto, without a jury, on June 12th and 13th, 1912.

J. A. Paterson, K.C., for the plaintiffs.

S. C. Smoke, K.C., for the defendants.

HON. MR. JUSTICE KELLY:—On July 1st, 1902, the Brantford Railway Company executed to the plaintiffs an indenture by which the company granted, bargained, sold, transferred, set over, mortgaged, conveyed, and confirmed to the plaintiffs certain properties and assets for the purpose of securing payment of an issue of bonds to the amount of \$125,000. The indenture (or mortgage, as we may term it), was expressed to be made "in pursuance of the Act respecting Short Forms of Conveyances."

On July 2nd, 1907, the defendants, the Brantford Street Railway Company, granted to the defendant, the Grand Valley Railway Company, the properties and assets so mortgaged. Subsequent thereto the defendants, the Grand Valley Railway Company, mortgaged to the Trust and Guarantee Company Limited not only the properties and assets so granted to it (subject to the said bond mortgage for \$125,000), but also other assets of its own which were then subject to a prior mortgage.

The time of maturity of the \$125,000 of bonds is in the year, 1932.