

after registration. Even if the mortgagor retain possession of the instrument there may be a delivery.

Reference to Halsbury's Laws of England, vol. 10, p. 403, para. 725; *Exton v. Scott* (1833), 6 Sim. 31; *Fletcher v. Fletcher* (1844), 4 Hare 67; *In re Way's Trusts* (1864), 2 De G. J. & S. 365; *McDonald v. McDonald* (1880), 44 U.C.R. 291; *Zwicker v. Zwicker* (1899), 29 S.C.R. 527; *Norton on Deeds* (1906), p. 13 et seq.; *Armour on Titles*, 2nd ed., pp. 336-9; *Anning v. Anning* (1916), 38 O.L.R. 277, 286, 293.

The mortgage should be declared a valid one and a security for the consideration named therein and interest as stated; and the plaintiff should have judgment for \$3,963.96, with interest, as claimed, and costs.

ROSE, J.

JUNE 10TH, 1918.

FOLEY v. LIPSON.

*Vendor and Purchaser—Agreement for Sale of Land—Subdivision of Block—Objection to Title—Building Restrictions—Covenant of Grantee—Protection of Land Retained by Original Vendor—Covenant Enforceable against Purchaser from Covenantor.*

Action by the vendor for specific performance of an agreement for the sale and purchase of land.

The action was tried without a jury at Toronto.  
Shirley Denison, K.C., for the plaintiff.  
J. Singer, for the defendant.

ROSE, J., in a written judgment, said that a land company was the owner of a block of land lying north of St. Clair avenue. Through this land Arlington avenue runs north from St. Clair avenue. The land company conveyed the lot in question and another lot to the plaintiff's predecessors in title, by a deed executed by the grantees, bearing date the 24th July, 1914, and duly registered, which contained a covenant in the words following: "To the intent that the burden of these covenants shall run with the land, the grantees, for themselves, their heirs, executors, administrators, and assigns, do hereby covenant and agree with the grantor, its successors and assigns, that (except with the written consent of the grantor) the said lands shall be used for no other purpose than as a site for private residences to be built of solid brick or stone and to be set back from the street line of