

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT OF CANADA.

Ont.] JAMIESON v. LONDON & CANADIAN LOAN & AGENCY CO. [Oct. 24.
*Mortgage—Assignment of lease—Liability of mortgagee—Discharge—
Abandonment of security.*

J. demised lands for a number of years with a provision against assignment by the lessor without his consent. The lessor assigned the lease by way of mortgage and the consent of J. was indorsed thereon. The mortgagee, in an action by J., was adjudged liable as assignee for payment of rent and taxes, and the lessor having died insolvent was about to register a statutory discharge of the mortgage when J. brought an action claiming a declaration that it could not be discharged without his consent and an injunction restraining the mortgagee from so doing.

Held, affirming the judgment of the Court of Appeal (26 Ont. A.R. 116; see also 34 C.L.J. 529) that under the Judicature Act the courts are bound to treat a mortgage as courts of equity have always done, as a mere accessory to the debt; that the lessor having consented to the specific assignment such consent included all such incidents as the law attaches to the covenants and agreements between the parties set forth in the deed as well as the covenants and agreements themselves; one of such incidents being that on repayment of the debt the mortgagee would be obliged to re-assign the mortgaged lands, the lessor could not prescribe the dealings between the parties as to the mortgage debt, and the mortgagee was free to release it if he chose; and that he did not require a further license from the lessor to do so. Appeal dismissed with costs.

S. H. Blake, Q.C., and *Irving* for appellant. *Robinson*, Q.C., and *Johnston* for respondent.

Ont.] LEWIS v. ALLISON. [Oct. 24.
*Title to land—Description of lands—Construction of deed—Party wall—
Tenants in common.*

M., owner of two warehouses Nos. 5 and 7, divided by a party wall, executed a deed by way of marriage settlement on his daughter of No. 5, describing it by metes and bounds in such a way as not to include any portion of said wall, but supplementing such description by the words "said property being known as the warehouse No. 5 Wellington Street West." The trustees having conveyed the property by the same description, and M. having died, his executors as owners of warehouse No. 7 brought an action to establish their title to an interest in the party wall.