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HIGH COURT DIVISION.

ORDE, J.

MARCH 29TH, 1920.

RE MCKAY.

Mortgage—Application by Mortgagor for Order Vesting Legal Estate in him—Payment of Mortgage-moneys—Trustee Act, sec. 9—Death of Mortgagee (Trustee) and Cestui que Trust—Status of Foreign Executors of Deceased Executor of Cestui que Trust—Absence of Consent from Legal Personal Representative of Mortgagee—Refusal of Application.

An application by Robert J. Goodfellow, as mortgagor of land, for an order vesting the land in him for all the estate of Allen P. McDonnell, the mortgagee, deceased, and of the heirs and executors of Susan McKay, also deceased, for whom it was alleged McDonnell held the mortgage as trustee.

The application was heard in the Weekly Court, Ottawa.
L. A. Kelley, for the applicant.

ORDE, J., in a written judgment, said that the application was based on meagre material, and was made without notice to and without the consent of any person interested. It was urged that the circumstances brought the matter within the provisions of sec. 9 of the Trustee Act, R.S.O. 1914 ch. 121, which give the Court power in certain cases to vest the mortgaged land in the mortgagor. The power must be very carefully exercised, and only in cases where it is clear that the interests of those entitled to the mortgage-moneys are fully safeguarded.

The mortgage was made to McDonnell, who was described therein as a trustee, but without any disclosure of the name of the cestui que trust. In an affidavit of the applicant's solicitor it was stated that McDonnell was a trustee for Susan McKay.