

DIARY FOR SEPTEMBER.

1. Sat. Long Vacation ends.
2. Sun. 14th Sunday after Trinity.
3. Mon. L. S. Trinity term begins. C.C. non-jury, York.
Sir Edward Coke died, 1634, æt. 82.
4. Tues. Court of Appeal sits.
5. Thur. Chy. Div. H.C.J. sits.
6. Sun. 15th Sunday after Trinity.
11. Tues. Gen. Sess. and C.C. sittings for trials in York.
13. Thur. Quebec taken and death of Wolfe, 1759.
14. Fri. Duke of Wellington died, 1852.
16. Sun. 16th Sunday after Trinity.
17. Mon. First Parliament of Up. Can. met at Niagara, 1792.
18. Tues. Quebec surrendered to the British, 1759.
23. Sun. 17th Sunday after Trinity.
28. Fri. W. H. Blake, 1st Chan. U.C., 1849.
30. Sun. 18th Sunday after Trinity.

Reports.

DIVISION COURTS.

[Reported for the CANADA LAW JOURNAL.]

GREENWOOD v. LONDON LOAN CO.,

Second mortgagee—Right to retain bonus in lieu of unearned interest on principal due through default in interest—R. S. O. c. 169—Rules of the company, how far binding on borrowers—R. S. C. c. 127.

The plaintiff was a second mortgagee of lands of which the defendants were first mortgagees. The defendants' mortgage was for ten years, but in the third year they sold the land for default in payment of interest, retaining the arrears of interest, the principal, and \$100 as a bonus or discount to compensate them for the lower rate at which any new loan would have to be made, money being worth only 6 per cent., while their mortgage was at 7½ per cent. This sum of \$100 the plaintiff claims as a subsequent incumbrancer, contending that the defendant, had no right to retain it.

Held, that the signing of an application containing an agreement to be bound by the rules of the defendants' company made the mortgagor liable to pay this bonus or discount under those rules, notwithstanding the Registry Laws and R. S. O. c. 169.

Held, also that this is not a contravention of R. S. C. c. 127. *Green v. Hamilton Provident and Loan Co.*, 31 C. P. 574, cited and followed.

[ELLIOTT, Co. J.—London, July 27.]

The plaintiff was the second mortgagee upon the land on which the defendants held the first mortgage, purporting to be made in pursuance of the Act respecting Short Forms of Mortgages, and containing power of sale in conformity with the form given in the Act.

The mortgagor being in default in the payment of interest, the defendants, in pursuance of the terms of their mortgage, claimed that

the whole purchase-money became due, and in exercise of their power of sale they sold the mortgaged land, appropriated the proceeds towards the repayment of the principal, with interest and costs, and also, as it is termed, discounted the future payments during the unexpired term of the loan, which consists of several years.

W. H. Bertram, for plaintiff.

Geo. McNab, for defendants.

ELLIOTT, Co. J.—It is as to the right of defendants to retain the amount arising from this discount that the differences which are the subject of this suit have arisen. It is not disputed that the plaintiff, as second mortgagee, is entitled to recover \$100 if he is entitled to recover anything, and the facts are admitted, so that the question to be solved is one entirely of law. The defendants rely upon *Green v. The Hamilton Provident and Loan Co.* (31 C. P. 574), where the same question was the subject of dispute. OSLER, J., in that case said: "If the question turned upon the terms of the mortgage alone, there would be nothing to support the defendants' contention. It is clear they would have no right to charge more interest than the principal money had earned. They could not by calling the latter in, either by a sale or otherwise, exact interest which had not accrued."

In that case and in this the authority to sell the mortgaged premises was contained in the power to sell given in the first schedule of the Act respecting Short Forms of Mortgages, which as amplified in the extended form, gives no authority to claim discount, so that in this respect the two cases are alike. Then, where is their authority for claiming this discount? There is nothing in the terms of the mortgage authorizing it, neither was there such authority in the mortgage held by the Hamilton company. In both cases the companies claimed by virtue of the rules regulating their proceedings, and in force when the loan was made to the mortgagors. Accordingly, unless there is something in this case to distinguish it from the Hamilton case, I must follow the latter. In the first place, let us see what is the statutory authority giving power for these rules. By 39 Vict. c. 32, s. 6, now to be found in R. S. O. c. 169, s. 66, it is enacted, after pointing out that borrowers need not be members, that "all borrowers from the society shall be subject to