

MIDDLETON, J.

APRIL 19TH, 1918.

RE HEWITT AND ARMSTRONG.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title—Sheriff's Deed—Sale of Equity of Redemption—Evidence—Agreement to Pay off Mortgage—Sale of Part of Land Subject to Mortgage—Evidence—Validity of Sale and Deed.

Application by a vendor of land, under the Vendors and Purchasers Act, for an order declaring that a requisition on title made by the purchaser was sufficiently answered.

The application was heard in the Weekly Court, Toronto.

F. M. Gray, for the vendor.

J. Gilchrist, for the purchaser.

MIDDLETON, J., in a written judgment, said that the question was as to the validity of a sheriff's sale. Edward W. Thompson owned the land, subject to a mortgage and to certain executions. By his will he devised it, "should it realise more than the charges against it," to Elmira M. Thompson and her children. He contemplated a sale, for he directed that the proceeds should be invested, and authorised his executors to give conveyances and execute acquittances.

The will was dated in April, 1862, and was admitted to probate in 1881. The date of death was not given; it probably took place shortly after the date of the will.

Judgment was obtained against the executors of Thompson, to be enforced *de bonis et terris testatoris*, and on the 23rd August, 1866, placed in the hands of the sheriff for execution. The sheriff advertised the lands for sale in the ordinary way, in the Ontario Gazette. Another and different advertisement was published by the executors, indicating that the lots were being sold separately, and that terms of credit had been arranged with the creditors.

A plan, dated the 13th June, 1868, was registered about the same date, signed by the executors and by the sheriff.

The sheriff's deed (13th June, 1868) recited a sale on the 21st March, 1868, of the land—not of the equity of redemption.

By an instrument dated the 13th May, 1872, and registered on the 13th June, 1872, it was certified that the executors of Thompson had paid off and discharged the mortgage in question.

By deed dated the 16th June, 1868, the widow of Thompson released her dower in the land. This deed recited that at the sher-