

# The Ontario Weekly Notes

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## COURT OF APPEAL.

DECEMBER 7TH, 1911.

### \*KAISERHOF HOTEL CO. v. ZUBER.

*Mortgage—Power of Sale—Duty of Mortgagee—Sale at Fair Value—Conduct of Sale—Conditions—Withdrawal of Bid—Collusion between Mortgagee and Purchaser—Slight Evidence of.*

Appeal by the plaintiffs from the judgment of a Divisional Court setting aside the judgment of CLUTE, J., at the trial, which was for the plaintiffs, and dismissing the action: 23 O.L.R. 481, 2 O.W.N. 941.

The action was to set aside a sale, under the powers of sale in mortgages, of an hotel property in the town of Berlin.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

M. A. Secord, K.C., for the plaintiffs.

G. H. Watson, K.C., for the defendants Zuber and Roos.

MEREDITH, J.A. :—Though it may be that there are some circumstances calculated to excite some suspicion as to the good faith of the mortgagee in the sale of the mortgaged property; yet, when the whole circumstances are reasonably considered, the judgment at the trial cannot be supported.

If the property had been sold at a great undervalue, the things calculated to excite suspicion would become more weighty; but, when it is made quite plain that a reasonable price was obtained, so large an one that no one even now offers more; and when it appears, as it plainly does now, that the purchaser had very good reasons for buying for himself, that indeed, in a business sense, he may fairly be said to have been

\*To be reported in the Ontario Law Reports.