

Province of Saskatchewan.

SUPREME COURT.

Lamont, J.]

[25 D.L.R. 432.]

MONTREAL TRUST CO. v. BOGGS.

1. *Mortgage—Transfer of mortgaged premises—Assumption of debt—Grantee's liability to mortgagee.*

Where a mortgagor sells the mortgaged premises and the purchaser assumes the mortgage, or retains in his possession an amount of purchase money equivalent thereto, the purchaser is compelled, by sec. 63 of the Land Titles Act, ch. 41 (Sask.), to appropriate that money to the mortgage, just as formerly he was compelled in equity to hand it over to the mortgagor if the mortgagor was compelled to pay the mortgage.

2. *Mortgage — Transfer of interest in mortgaged premises — Assumption of debt—Implied covenant.*

Sec. 63 of the Land Titles Act, ch. 41 (Sask.), which implies a covenant to pay the mortgage debt by a purchaser of the mortgaged premises has no application to the purchase of only an interest in the mortgaged premises.

Short v. Graham, 7 W.L.R. 787, followed.

Munro, for plaintiff. *McLean*, for defendants.

ANNOTATION OF ABOVE CASE.

A collection of the authorities on the equitable rights on sale subject to mortgage, and the assumption of the mortgage debt upon a transfer of the mortgaged premises, is contained in the annotation to the case of *Ross v. Schmitz*, 14 D.L.R. 648, at 652.

At common law, when property was sold subject to mortgage, the purchaser was held in equity bound to indemnify the vendor against his personal liability to the mortgagee under the covenant to pay contained in the mortgage. Hence, until the passage of the statutes enabling the mortgagee to proceed directly against the transferee of the mortgaged property, unless the mortgagee was fortunate enough to be able to obtain an assignment of the vendor's equitable right of indemnity, he could not sue the purchaser for the money due on the mortgage. *Short v. Graham* (Alta.), 7 W.L.R. at 790.

The application of the statute is restricted entirely to the case where there has been a *real* purchase by the transferee and a complete parting