

ence to the said mortgage will more fully appear; the nature of the security, the rights of the holders of the bonds secured by it, and the terms of the trust, appear by the said mortgage, to which reference is hereby expressly directed, and which terms are made a part of this bond."

The mortgage contains the usual provisions for redemption, and that until default the mortgagors shall be permitted "to possess, operate, manage, use, and enjoy the mortgaged premises, and to take and use the rents, incomes, profits, and issues thereof in the same manner and to the same extent as if these presents had not been executed."

It also contains elaborate provisions enabling the mortgagees, upon default, to take possession and operate or sell the mortgaged premises.

The mortgage was duly registered against the lands covered thereby, but was not filed as a chattel mortgage, nor was anything done to comply with secs. 2, 3, or 23 of the Bills of Sale and Chattel Mortgage Act—as, from the beginning, the plaintiff has assumed that the provisions of that Act did not apply to the mortgage.

On the 14th September, 1907, the company made a general assignment for the benefit of its creditors to Henry R. Morton, who entered into possession as assignee and proceeded to realise upon the personal estate of the company.

By order dated the 20th September, 1907, made under the Dominion Winding-up Act, the company was declared to be insolvent and ordered to be wound up, the defendant appointed provisional liquidator, and a reference directed to Mr. McAndrew, an Official Referee, to appoint a permanent liquidator, and to take all necessary proceedings for and in connection with the winding-up of the company. On the 30th November, 1907, the defendant was appointed permanent liquidator.

The appointment of liquidator having superseded that of the assignee, the former took possession of all the assets of the company, and proceeded to convert the same into money and to collect outstanding accounts, and generally to administer the affairs of the company. . . .

The first claim made by the plaintiff to assets and proceeds of assets in the defendant's hands was by a notice in October, 1909, in which the plaintiff claims all the proceeds of the assets of the company realised by the defendant as liquidator, and all other assets (if any) which may be unrealised in the hands of the liquidator, upon the ground that all such assets belonged to the plaintiff by virtue of the above-recited mortgage.