

North-West Territories.

NORTHERN ALBERTA JUDICIAL DISTRICT.

SCOTT, J.]

[Sept. 11, 1895.

MORRIS *v.* BENTLEY.

Registry laws—Territories Real Property Act—Equitable rights—Subrogation—Res judicata—Assurance fund—Distribution of costs.

This action was brought against the Registrar of the South Alberta Land Registration District as nominal defendant to recover out of the Assurance Fund provided by the Territories Real Property Act, on the facts stated below, and by amendment, Bentley, the registered owner of the lands, was made a party defendant, the plaintiff claiming as against him, in the alternative, subrogation to the extent of the Primrose mortgage below mentioned.

On the 26th September, 1889, one Gay, being the registered owner of the west half of Lot 8, Block "H," Lethbridge, subject to a mortgage for \$300 and interest to one Primrose, gave a mortgage to the plaintiff to secure \$500 and interest, and on the 14th of October, 1889, the plaintiff having obtained from Primrose the certificate of title and a discharge of his mortgage, caused his mortgage and the Primrose discharge to be registered, on finding no other encumbrance registered against the said lands, and, on the receipt from the Registrar of the duplicate certificate of title showing his mortgage to be the only encumbrance, paid Primrose \$307, the amount of his mortgage, and advanced the remainder of the \$500, viz., \$193, to Gay.

A few days prior to the registration of the Primrose mortgage, viz., on Oct. 7th, 1889, the defendant Bentley had handed in to the Registrar a mortgage of these and other lands from Gay to himself to secure \$2,000, but unaccompanied by the duplicate certificate of title of these lands, which mortgage was filed by the Registrar and an entry made in the day book, the registration not being completed by the entry of a memorial on the certificate of title in the Register until March, 1890, when defendant Bentley handed to the Registrar the duplicate certificate of title which he had obtained from the plaintiff, whereupon the Registrar endorsed a memorial of the Bentley mortgage on the certificate of title and the duplicate under the memorial of the plaintiff's mortgage.

In October, 1891, on a summary application on notice to the plaintiff, Bentley obtained an order from Magurie, J., declaring the Bentley mortgage to have been registered on October 7th, 1889, and to be entitled to priority over plaintiff's mortgage and directing the Registrar to amend the registration in accordance therewith.

Default having been made under defendant Bentley's mortgage, after notice to Gay and the plaintiff, he offered the lands for sale, and, failing to make a sale, after further notice to the plaintiff, applied for and on the 15th September, 1892, obtained an order for foreclosure, on the registration of which the Registrar cancelled the certificate to Gay and issued a new one to Bentley. Some evidence was given of an offer by defendant Bentley, prior to the application to Maguire, J., to purchase plaintiff's mortgage.

The learned judge found that plaintiff had paid off the Primrose mortgage in the belief that there was no other encumbrance, and that he was thereby obtaining a first mortgage on the lands; that at no time after the registration of the Bentley mortgage was the land of sufficient value to realize the amount