

might have ended the strife and acknowledged that he was wrong. Failing that, the plaintiff was driven to do the best he could. The defendant has no reason to complain nor is he to be put in a better position than if he himself had occupied the land for the two seasons the plaintiff had it; in which case he would have suffered approximately the same loss.

We have endeavoured to reach a fair conclusion as far as possible, and the case is not one in which "golden scales" should be used in estimating what the defendant should pay for his tortious conduct.

As to appeal and cross-appeal to Middleton, J., there should be no costs to either party; as to this appeal the defendant should pay the costs.

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HON. MR. JUSTICE BRITTON.

FEBRUARY 14TH, 1914.

GOLDBERG v. GROSSBERG.

5 O. W. N. 845.

*Mortgage—Foreclosure—Parties to Action—Action against Executors—Beneficiaries not Joined—Will—Power to Sell Land—Vendor and Purchaser Application.*

LATCHFORD, J., *held*, that in the case of executors or trustees the persons ultimately entitled need not be joined in foreclosure proceedings.

*Emerson v. Humphries*, 15 P. R. 84, followed.

Application for an order declaring that the objection to the title of vendors to the land in question, made by above-mentioned purchaser, on the ground that the children of one Julius Breterwitz were not joined as defendants in foreclosure proceedings taken by the Hamilton Mutual Building Society after the death of the said J. Breterwitz, under a mortgage made by the said J. Breterwitz in his lifetime, has been satisfactorily answered by the vendors, and that the same does not constitute a valid objection to the title, and that a good title has been shewn in accordance with the conditions of sale.

F. F. Treleaven, for vendor.

C. E. Burkholder, for purchaser.

HON. MR. JUSTICE BRITTON:—I am of opinion that the vendor is entitled to the declaration.