

Leave was granted to the mortgagee to give in evidence a release of the right of way, so as to enable him to restore the property to the mortgagor as it was when mortgaged.

An appeal by S. M. Abercrombie, creditor of the estate of Eyre Thuresson, deceased, from an order of Neil McLean, Official Referee, sitting for the Master in Ordinary, disallowing her claim under a covenant contained in a mortgage. Eyre Thuresson in October, 1887, made the mortgage in question to one Clare to secure \$11,000, who therein agreed "to release and discharge at any time or times and without any notice or bonus, any portion or portions of the land having at least a frontage of 20 feet, upon payment by the mortgagors, their heirs, executors and administrators or assigns, at the rate of \$71 per foot frontage for the portions required to be released or discharged. The land was described as lots 1, 2, 3 and 4, and block A on the north-west corner of Queen and Sorauren Streets in the city of Toronto, "said lots and block A having a frontage of 157 feet 2 inches on Queen street, by a depth of 117 feet. The lots had that frontage on the north side of Queen street, and block A was a piece of land having a frontage of 10 feet on the west side of Sorauren Street and a depth of 157 feet 2 inches and adjoined the rear or north limits of the lots—in reality a lane 10 feet wide in their rear. The mortgage was made pursuant to the Short Forms Act. In December, 1888, Thuresson conveyed his equity of redemption to one Bryce, who covenanted to indemnify against the mortgage. In June, 1889, Bryce conveyed to one Hickson, who gave a similar covenant to indemnify his grantor. Hickson died in January, 1891, and in administration proceedings one McQuillan purchased, and had conveyed to him, a portion of the land described as "the easterly 40 feet from front to rear of lot number one on the north side of Queen street and west side of Sorauren avenue * * * having a frontage of 40 feet by a depth of 107 feet; together with the right of way for all purposes over lot A shewn on said plan." Lot A is block A. Clare executed a statutory partial discharge stating that Hickson's executors had satisfied \$2,200 of the mortgage money and describing the piece of land and right of way exactly as described in the conveyance to McQuillan. The appellant is the present holder of the mortgage made by Eyre Thuresson, and seeks, under the covenant in it, to prove against his estate for the balance remaining unpaid under the mortgage.

The appeal was argued on 12th December, 1901, before a Divisional Court, Falconbridge, C.J., and Street J.