

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.]

[Nov. 12.]

MCEWAN v. HENDERSON.

Demurrer—Assignment of mortgage—Covenant that mortgage is a good and valid security—Warranty of title.

This was an action for damages for breach of a covenant in a deed of assignment of a mortgage of lands. The declaration alleged that by that deed the defendant covenanted with the plaintiff that the mortgage thereby assigned was a good and valid security, and the breach assigned was that the mortgage was not, at the time of the assignment, and has never since been, a good and valid security, and that the defendant never had a good and valid title or any title to the lands comprised in the mortgage.

Two pleas were put in to this declaration to which the plaintiff demurred.

On the argument of the demurrer the defendant's counsel contended that the declaration was bad, and disclosed no cause for action. Plaintiff's counsel argued that the covenant should be construed as if it warranted that the mortgagor and the mortgagee had a good title to the mortgaged lands, and the declaration admitted that the mortgage had been duly executed by the mortgagor, and that it had been given to secure the payment of the moneys mentioned therein.

Held, that the covenant set out in the declaration could not be construed as a covenant that the mortgagor had a good title to the land, or that the mortgage was effective to charge the land with payment of the mortgage moneys.

Held, also, without considering whether the pleas were good or not, that the declaration disclosed no cause of action against the defendant, and that the demurrers should be overruled.

Bradshaw for the plaintiff.

Howell, Q.C., for the defendant.

Appointments to Office.

HIGH COURT JUDGES (ONTARIO).

William Ralph Meredith, of the City of Toronto, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law, to be a Judge of the Supreme Court of Judicature for Ontario, a Justice of the High Court of Justice for Ontario, a Member of and the President of the Common Pleas Division of the High Court of Justice for Ontario, with the title of Chief Justice of the Common Pleas.

Duncan Chisholm, Esquire, Junior Judge of the County Court of the County of Waterloo, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.