

DIVISIONAL COURT.

APRIL 6TH, 1912.

*BEATTY v. BAILEY.

Mortgage—Covenant for Payment Implied in Instrument Creating Charge under Land Titles Act—Action for Mortgage Money—Instrument not under Seal—Effect of Provisions of Act—Limitation of Actions—Period of Limitation—Second Mortgagee—Release to First Mortgagee—Effect of, on Right to Sue—Inability to Reconvey—Reservation of Rights.

An appeal by the plaintiff from the judgment of DENTON, Jun. J. of the County Court of the County of York, dismissing an action in that Court, brought for the recovery of \$797.20, for principal and interest, upon the covenant implied in an instrument creating a mortgage or charge upon land registered under the Land Titles Act.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

W. J. Elliott, for the plaintiff.

W. C. Chisholm, K.C., for the defendant.

BOYD, C.:—The Land Titles Act was expressly designed to simplify titles and to facilitate the transfer of land; it is not intended to change or destroy civil rights and remedies. True it is that "seals" were in effect abolished as a necessary part of any instrument affecting land, and the forms given in the Act or approved by the Act for the transfer and the mortgaging or charging of land are to be without seals. This is intended to emphasise the fact that the virtue of the Act does not rest on the technical form and execution of the conveyance, but upon the fact of the instrument (whatever it is) being registered under the Act. It is the certificate of this registration held by the owner which corresponds to the ordinary possession of title deeds: R.S.O. 1897 ch. 138, sec. 101. . . .

[Reference to the provisions of secs. 13, 33, 34, 40 (3), 41, 101, 107.]

By the rules annexed to the Act, No. 71 directs the use of the forms given in the schedule, and No. 28 gives the form (not under seal) used in this case by the owner, Bailey, when

*To be reported in the Ontario Law Reports.