

ALTA.
—
S. C.
—
SETTLE
v.
THE
REGISTRAR.
—
Harvey, C.J.

A. H. Clarke, K.C., and A. L. Smith, for the plaintiff.

E. B. Edwards, K.C., and Duncan Stuart, for the defendant.

HARVEY, C.J.:—In October, 1909, one Meyer gave a mortgage to the plaintiff on an undivided one-half interest in the S.E. 1-4 26-31-2, west of the 5th meridian, to secure \$2,016, the purchase price of certain machinery. At the time the mortgage was given the title to the said land stood in the name of the Hudson's Bay Co., Meyer and another being the purchasers under an agreement of sale assigned to them upon which there was a small balance still unpaid. The plaintiff being unable to register the mortgage, caused a caveat to be filed under which he claimed to be interested as mortgagee under his unregistered mortgage. As required by sec. 86 of the Land Titles Act, the registrar caused a memorandum of the caveat to be entered on the certificate of title standing in the name of the Hudson's Bay Co., but by error the land was described as section 23 instead of section 26 and in consequence, when the transfer from the Hudson's Bay Co. to Meyer and his co-owner came in to be registered, the caveat was disregarded and no memorandum of it was noted on their certificate. The land was subsequently sold as unencumbered, but the mortgage was not paid though there was a small amount paid on it at one time. The plaintiff recovered a judgment against the mortgagor for the amount unpaid, but the sheriff has been unable to realize anything on the execution, to which he has made a return of *nulla bona*.

The notice provided by sec. 108 of the Land Titles Act (ch. 24 Statutes of Alberta, 1906) was given and this action was then begun against the Registrar as nominal defendant. At the conclusion of the trial I intimated that I feared that the provisions of the Act furnished no relief but I reserved judgment to see if I could reach a different conclusion. A careful consideration of our Act and a comparison with the Acts of Manitoba and Saskatchewan and of the Australian States have only confirmed the impression that I had at the close of the trial. The Torrens system is so called because it was first introduced by the South Australian Legislature in 1858 at the instance of Sir Robert Torrens.