

THE FIDELITY TRUST COMPANY OF ONTARIO (DEFENDANT AND THIRD PARTY)	} APPELLANT; ¹⁹²⁹ *May 28, 29. *June 13.

AND

MARGARET PURDOM (PLAINTIFF).....RESPONDENT;

AND

THE NORTHERN LIFE ASSURANCE COMPANY OF CANADA (DEFEND- ANT)	} RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ONTARIO*Mortgage—Trusts and trustees—Construction and effect of declaration of trust—Plaintiff's interest thereunder—Right of mortgagor to make mortgage in question as against plaintiff's interest—Notice to mortgagee—Mortgagee's right to indemnity against mortgagor.*

APPEAL by the Fidelity Trust Company of Ontario, defendant and third party, from the judgment of the Appellate Division of the Supreme Court of Ontario (1), which allowed the plaintiff's appeal from the judgment of Orde J.A. (1), dismissing her action as against both defendants. By the judgment of the Appellate Division (1) it was declared that a certain mortgage made by the present appellant to the defendant, The Northern Life Assurance Company of Canada, was not binding upon the plaintiff's interest in certain lands included in the mortgage; and it was also declared that the defendant, The Northern Life Assurance Company of Canada, was entitled to indemnity and relief over against the present appellant.

On appeal to the Supreme Court of Canada, after hearing counsel on behalf of all parties, the Court reserved judgment and, on a subsequent day, delivered judgment (no written reasons being given) dismissing the appeal with costs.

Appeal dismissed with costs.

A. C. McMaster K.C. and J. M. Bullen for the appellant.

W. N. Tilley K.C. and J. W. G. Winnett K.C. for the respondent (plaintiff) Margaret Purdom.

J. G. Gillanders for the respondent (defendant) The Northern Life Assurance Company of Canada.

*PRESENT:—Anglin C.J.C. and Duff. Rinfret, Lamont and Smith JJ.