The law of mortgages of real estate, including mortgages under the land titles system

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LAW OF
MORTGAGES OF REAL ESTATE.
THE LAW

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MORTGAGES

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UNDER THE LAND TITLES SYSTEM.

BY

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PREFACE

This book is in part a product of the lectures which I have given at Osgoode Hall since the year 1909, when the Law Society of Upper Canada appointed me lecturer in equity in succession to the late Mr. Alfred H. Marsh, K.C. Some of the features of the book are due to the fact that it is intended for the use of students as well as practitioners.

I have had the advantage of using, in addition to Mr. Marsh's notes, the material contained in the Treatise on the Law of Mortgages of Real Estate, published in 1899, by Mr. Edwin Bell, the present secretary of the Law Society, and the late Mr. Herbert L. Dunn. I have, however, departed so widely from the arrangement adopted by the authors of that work and have to such an extent rewritten and added to their material that it has seemed proper, Mr. Bell being a consenting party, that the present book should appear under my name.

The book contains references to the leading decisions in all the common law provinces. The Ontario statutory provisions relating to the subject have been quoted as a rule without abbreviation, and references have been given to the English statutes, if any, from which they are derived, so as to afford to a practitioner in another province the means of readily comparing the Ontario and English statutes with those of his own province and of judging to what extent the numerous Ontario and English decisions are applicable to his own province. It is hoped therefore that the book will be a useful guide to the law of all the provinces other than Quebec.

The Ontario Registry Act is fully discussed so far as it affects the question of priorities and the law of mortgages,
the registration of deeds being the system which is largely prevalent in Ontario. In the western provinces, on the other hand, the registration of deeds is not the prevalent system and in most of them the registration of titles is the exclusive system. By way of exception, therefore, the discussion of the land titles system has been chiefly based, not on the Ontario statute, but on the statutes of Manitoba, Saskatchewan and Alberta, the provisions of the Ontario statute being referred to for the purpose of comparison.

The German war, now about to be brought to a just conclusion, has had as one of its legal results the enactment of various moratory statutes. Such statutes are in their nature of temporary importance only. They will cease to have any operation within a limited period after the restoration of peace and the decisions construing them will constitute no permanent addition to the law of contract. I have therefore relegated the Mortgagors' and Purchasers' Relief Act to the final chapter, and as it does not appear from practical experience that there is any reason to suppose that mortgagors or their advisers will overlook this statute, I have not considered it necessary, in the earlier parts of the book, to refer to its provisions in qualification of my statement of the remedies of mortgagees.

J. D. F.

Toronto, 31st December, 1918.
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