

The defendants denied that they signed the deed containing the covenant, and also alleged that they had an equitable set-off greater than the plaintiff's claim under the covenant.

The action was tried without a jury at Toronto.

L. F. Heyd, K.C., for the plaintiff.

J. A. Macintosh, for the defendants.

CLUTE, J., in a written judgment, said that there was an exchange of properties between one Sonshine and the defendants, upon which properties there were existing mortgages, and the purchasers in each case assumed the mortgages on the property which they received in exchange for their property. No money passed, and default was made by both parties. The plaintiff received from Sonshine an assignment of his interest in the covenant by the defendants, and claimed to recover the full amount due upon the mortgage in respect of which the covenant was said to have been given. The assignment was dated the 26th January, 1916, and, in consideration of one dollar, purported to "grant and assign unto the assignee, his heirs, executors, administrators, and assigns, the said covenant with the said Morris Swartz and Simon Rabinovitch and all benefit and advantage to be derived therefrom."

In the deed of land from Sonshine to the defendants Swartz and Rabinovitch, there was this covenant: "Subject also to registered mortgage incumbrances which the purchasers assume and covenant to pay as part of the said purchase-price;" but this deed was not signed by the defendants, but only by the grantor; and for that reason the assignee could not maintain the action.

Reference to *Credit Foncier Franco-Canadien v. Lawrie* (1896), 27 O.R. 498; *Furness v. Todd* (1914), 5 O.W.N. 753, 25 O.W.R. 708; *Burnett v. Lynch* (1826), 5 B. & C. 589; *Witham v. Vane* (1881), 44 L.T.R. 718.

Mr. Heyd relied upon *British Canadian Loan Co. v. Tear* (1893), 23 O.R. 664; *Campbell v. Morrison* (1897), 24 A.R. 224. These cases shewed that an equitable obligation of a purchaser of land subject to a mortgage may be assigned by the vendor to the mortgagee, but were not in conflict with the *Credit Foncier* case.

It was unnecessary, in this view of the case, to consider the equitable rights which the defendants claimed in respect of the exchange.

*Action dismissed with costs.*