

Hearn (a), *Mortlock v. Buller (b)*, *Macnamara v. Arthur (c)*; and even an inquiry should not be directed—*Bellamy v Sabine. (d)*. 1853.

Matthews
v.
Holmes

Mr. R. Cooper, for the plaintiff, in the Court below, supported the respondent's reasons, and adduced in support of them the cases cited in the Court below, and the views taken by the Court in pronouncing judgment.

ROBINSON, C. J.—The principal object sought by this appeal is the reversal of the decree of the Court of Chancery in regard to the four lots 11 and 12 on King street and Dundas street, alleged in the bill to have been mortgaged by *Alfred Jones* to *Edward Matthews*, now deceased; the defendant *Catherine Matthews* being the executrix and devisee of *Edward Matthews* and the plaintiff *Holmes*, the assignee of the bankrupt estate of *Alfred Jones*. The decree recognizes a right of redemption in the assignee of *Jones's* estate; and whether the court was warranted by the evidence in determining that the transaction between *Alfred Jones* and *Matthews* was in fact a mortgage, although the conveyance executed by *Jones* was in its terms absolute, and that an equity of redemption was subsisting in *Jones* at the time of his bankruptcy, are the questions to be considered. I will read the substance of the bill and answer, which are short. [His Lordship here stated the pleadings].

Sept. 22

Judgment.

The assignment made in September 1840, by *Alfred Jones* to *Matthews*, which is the foundation of the suit, was not produced in evidence by either party. Its non-production is accounted for by the assertion that it cannot be found in the government office. No precise evidence was attempted to be given of its contents.

In disposing of the case without knowing the exact terms of the deed, we are acting rather in the dark; for

(a) 7 Ves. 211. (b) Ves. 292. (c) 2 B. & Be. 349. (d) 2 Ph. 425.