

R. 611, at p. 621. See also *Stokes v. Grant*, 4 C. P. D. 25, 28.

In my opinion paragraphs 5 and 3 should be struck out, but not paragraph 2. Paragraph 4 should be more precise if required by the other side. The defendants may amend their defences to the counterclaim if they desire to do so. Costs will be in the cause. The other defences will be dealt with in the same way.

MACMAHON, J.

NOVEMBER 9TH, 1906.

TRIAL.

CARMAN v. WIGHTMAN.

Mortgage — Assignment — Agreement—Executors—"Acting Executor"—Solicitors—Investment of Funds—Liability for Loss.

Action by R. B. Carman against the executors of the will of John Wightman to recover the amount due upon a mortgage, and counterclaim by defendants against R. B. Carman, James Leitch, and R. A. Pringle, for malinvestment of funds, etc.

R. Smith, Cornwall, and A. Langlois, Cornwall, for plaintiff and defendants by counterclaim.

D. B. Maclellan, K.C., and C. H. Cline, Cornwall, for defendants.

MACMAHON, J.:—One Farquhar McCrimmon on 27th February, 1889, mortgaged to Patrick Purcell the north half of lot 27 in the 3rd concession of the township of Lancaster, to secure the repayment of \$2,000 in 5 years, with interest at 6 per cent.

On 23rd October, 1891, McCrimmon conveyed the mortgaged land to John Wightman, in consideration of \$5,300. The conveyance is made free from all incumbrance, "save and except a mortgage to Patrick Purcell, dated 27th February, 1889, upon which \$2,000 is payable, which sum is deducted from the consideration of \$5,300 within mentioned."