

and not from the mere conveyance, and that such right does not arise where a conveyance is taken merely as security for a debt, and the grantee does not go into possession and receipt of the profits of the land. It is only as between a real vendor and a real purchaser, in the ordinary sense of the words, that such right of indemnity arises: *Fraser v. Fairbanks*, 23 S.C.R. 96; *Walker v. Dickson*, 20 A.R. 96; *Beatty v. Fitzsimmons*, 23 O.R. 245; *Corby v. Gray*, 15 O.R. 1.

Plaintiff's counsel also further contended that the defendants were estopped by the recital in the bill of sale from denying the fact of their having purchased the property, and that evidence should not be received to contradict the formal, solemn statements of such recital.

*Held*, that to make a recital operate as an estoppel one essential is that there must be either an action directly founded on the instrument containing the recital, or one which is brought to enforce the rights arising out of such instrument: *Taylor on Evidence*, 8th ed., p. 120; and that as the present suit was founded upon an obligation arising, if at all, from the sale of the land, and not founded on anything contained in the conveyance, the defendants could not be estopped from giving evidence of the actual circumstances occurring.

The business of the defendants being that of the bankers,

*Quære*: Whether the other partners would have had any authority to bind Andrew Allan by such an agreement as was alleged by the plaintiff to have been entered into with him?

Bill dismissed with costs.

*Wilson and Vivian* for the plaintiff.

*Tupper, Q.C.*, and *Phippen* for the defendants.