

he had purchased, else the mortgage would be foreclosed. He did pay this mortgage, as already stated, within ten days after the purchase of the property. The principle is laid down that "the only safe criterion in deciding whether a transaction, *prima facie* a sale, is an absolute or conditional sale or mortgage, is the intention of the parties. And in order to establish the transaction as a mortgage it must be shewn that the intention and understanding of both parties concurred to that effect. The mere fact that the grantor intended and considered it to be a mortgage is not sufficient:" 20 Am. & Eng. Encyc. of Law, 937.—The party asserting that a deed purporting to be a sale was in reality a mortgage "has, in my opinion, wholly failed to establish her contention. I do not think it necessary to review the cases in which oral evidence has been received to qualify and cut down a deed of conveyance of land which is absolute in its terms, into a mortgage. In cases of this kind, as is laid down by the Privy Council in *Holmes v. Mathews* (9 Moore P. C. 413), the onus rests altogether on the appellant, not only to rebut the presumption that the title as appearing in the written instrument is in perfect accordance with the intention of the parties, but he must also establish to the satisfaction of the Appellate Court that the judgment of the court below, adverse to his contention, is erroneous. In *Rose v. Hickey* (Cassel's Dig. 292), decided in this Court in 1880, we held that the evidence necessary for this purpose must be of the clearest and most conclusive and unquestionable character"—Per Gwynne, J., in *McMicken v. The Ont. Bank*, 20 S. C. R. at p. 575. The evidence of Dr. Ronan, agent of the tenant, is the only evidence in support of the contention that the deed produced in evidence in this enquiry—a deed of conveyance absolute in terms—was given by way of mortgage. Taking into consideration the conduct of the agent, and the admission of the tenant that she was, when she executed the deed, conveying her property to the landlord, and the positive denial of the landlord that the deed was taken by him other than as a deed absolutely conveying to him the property, I believe the evidence of the landlord on this branch of the case; and as a question of fact, find in favour of the landlord. I, therefore, decide that the deed conveyed the property to the landlord in fee without any understanding by him that such was anything else but evidence of the absolute conveyance of the property, and was not cut down by any defeas-