

W. E. Gundy, Chatham, for defendant.

MACMAHON, J.:—The writ of summons in this action was issued on 29th June, 1905.

The plaintiff, by his statement of claim, seeks to redeem, asks for an account of the rents and profits received by the defendant, and payment of the balance, if any, in his favour.

On 28th March, 1893, the plaintiff conveyed to the defendant lot 1 on the north side of Main street in the town of Ridgetown.

In an action in which the Molsons Bank were plaintiffs, and Archibald Patterson (the plaintiff), James A. Dart (the defendant), James D. Teetzel, and John Turner, were defendants, which was tried in November, 1894, before Chief Justice Armour, judgment was given in favour of the Molsons Bank against the defendants Archibald Patterson, James A. Dart, and James D. Teetzel, for \$1,493.40 and costs, the total being \$1,752.10; and also judgment for the defendant Dart against the defendant Patterson therein for the sum of \$1,857 and interest from 7th November, 1894, and costs to be taxed. It was also declared by the judgment that the deed from plaintiff to defendant was a mortgage only, and that plaintiff was entitled to redeem on payment to defendant Dart of the amount found to be due in respect thereof, and in default a sale of the lands. A reference was directed to the Master at Chatham.

Judgment was on the 17th April, 1895, entered in that action by the Molsons Bank against Patterson, Dart, and James D. Teetzel, three of the defendants therein, for \$1,752.10; and judgment was also on the same day entered in favour of James A. Dart against Archibald Patterson for \$1,857, and interest from the 7th November, 1894, and costs to be taxed.

The Molsons Bank on the 15th May, 1895, assigned their judgment against Patterson, Dart, and Teetzel, to David Waterworth.

By an agreement under seal bearing date 27th April, 1895, between the plaintiff, of the first part, and the defendant, of the second part, the terms of the judgment of Chief Justice Armour are recited, and it is also therein recited that there is no dispute as to the accounts between them, and that they have agreed upon a period for redemp-