

failed upon the evidence; and all other charges of fraud and misrepresentation were negatived.

It was argued that, as one of the mortgagees had conveyed some interest in the land, there could not be a reconveyance, and therefore the personal remedy on the covenant had gone. But the mortgagees had not parted with any interest in the land except by the assignment to Nelles; and, Nelles being a defendant, a judgment could be aptly framed to provide for his joining in the reconveyance upon payment of the mortgage-money. An account should be taken to ascertain the amount due to the mortgagees, and this amount should be paid into Court to the credit of the action, subject to further order; and, upon payment into Court, the plaintiffs and the defendant Nelles should be ordered to reconvey the land. The respective rights of the plaintiffs and Nelles can then be ascertained upon motion for payment out. The personal recovery will be by a direction to pay into Court. The plaintiffs will, in that event, have the carriage of the execution; but Nelles's rights will be protected; and the sheriff's duty will be to pay the money into Court.

The quit-claim deed should be reformed by striking out the name of the wife as grantee therein and directing that any estate or interest which by the deed had become vested in her should be vested in the husband, subject to the rights of the plaintiffs and Nelles as mortgagees and to the lien for unpaid purchase-money.

The Court has power to give time to a mortgagee to get back an estate he has parted with: *In re Thuresson* (1902), 3 O.L.R. 271.

The plaintiffs to have their costs throughout against the defendants the Wrights. As to Nelles, no costs.

LENNOX, J.

JUNE 11TH, 1915.

KING v. CONSUMERS GAS CO. OF TORONTO.

Highway—Excavation in—Injury to Passer-by—Negligence of Gas Company—Finding of Jury—Possible Remedy against Municipal Corporation Lost by Failure to Give Notice under Municipal Act—Joint Tort-feasors—Effect of Release of one—Right of Contribution—Misfeasance—Nonfeasance.

Action by Lucinda King and William King, her husband, to recover damages for personal injuries sustained by her by falling into an excavation made by the defendants in a highway in