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No. 23.

CARTWRIGHT, MASTER.

JUNE 8TH, 1903.

CHAMBERS.

FARMERS' LOAN AND SAVINGS CO. v. MUNNS.

Summary Judgment—Rule 603—Implied Covenant for Payment—Instrument of Charge—Defence—Unconditional Leave to Defend.

Motion by plaintiffs for summary judgment under Rule 603 in an action on the covenant for payment deemed to be contained or implied in a transfer by way of mortgage or charge under the Land Titles Act.

F. J. Dunbar, for plaintiffs.

G. Grant, for defendant.

THE MASTER.—The plaintiffs' claim in this case is similar to the cause of action in *Wilkes v. Kennedy*, 16 P. R. 204. In that case the charge was created by an instrument dated 15th March, 1890. In the present case the charging instrument bears date 22nd October, 1890. A further coincidence is found in the fact that in *Wilkes v. Kennedy* a "William Munns" was one of the mortgagees under whom Wilkes claimed as assignee. In that case Munns made an affidavit corroborating the defence of Kennedy that at the time of the creation of the charge "it was clearly understood and agreed that the equity of redemption alone was being dealt with and that he was to give no covenant for payment of mortgages thereon, but that the land alone was to be liable." . . . Mr. Munns, being now the defendant, has made an affidavit similar to that made for Kennedy. . . .

In my opinion, the motion must be refused, in face of the uncontradicted affidavit. This, as it seems to me, is corroborated in an unusual way by the only affidavit filed in support of the motion. . . . That affidavit verifies the indorsement on the writ of summons. I have tested the figures, and find that no interest has ever been paid from the very first on the principal sum. The result is, that interest and