

standing the releases of the equity of redemption, but, owing to inability to settle the footing on which the amount of indebtedness should be ascertained and payment made, they came to nothing.

In the result the trial Judge upheld the mortgage and releases and denied the plaintiffs' claim to be let in to redeem. He found the charges of fraud to be disproved, and, with regard to the agreements between the defendants the Leadlays and John T. Moore, he held that at the time they were made the lands had become vested in and were the absolute property of the defendants the Leadlays, and that they and the defendant John T. Moore were entitled to enter into any bargain or agreement relating thereto that they saw fit to do, and that the defendant John T. Moore occupied no fiduciary or other position towards the plaintiffs which prevented him from agreeing for his own benefit, and that he was not a trustee for or accountable to the plaintiffs for his dealings with the lands under the agreements; and he dismissed the action as against all the defendants.

The plaintiffs appealed, relying on substantially the same grounds as at the trial.

At the opening of the appeal, and again more distinctly and definitely in the course of his argument, Mr. Cunningham, on the plaintiffs' behalf, expressed their willingness to redeem the defendants the Leadlays, treating the mortgage as a valid security for the whole amount secured by it, including the amount advanced and paid by the Leadlays in 1900, under and upon what has been called the postponement agreement, and the agreement under which the mortgaged lands were released to the Leadlays, making all proper allowances for taxes and other expenditures, including payments and expenses incurred in and about the sale of the lands which have been disposed of. The plaintiffs also withdrew all charges of fraud against the defendants the Leadlays.

Mr. S. H. Blake, on behalf of the defendants the Leadlays, submitted to redemption on these terms, but urged that the plaintiffs should not be allowed the usual 6 months for payment, but should pay the sum found to be payable at some shorter date. Having regard to all the circumstances, it will not be unfair to either party to permit the usual time for redemption, provided that the effect will not be to put it out of the power of the parties to deal with the lands