

HON. MR. JUSTICE LENNOX.

JUNE 16TH, 1914.

ROBINETT v. MARENTETTE.

6 O. W. N. 606.

Contract—Conveyance of Land to Defendant—Security for Moneys Advanced—Binding Agreement to Convey—Tender of Amount of Advances—Interest Costs—Counterclaim.

Plaintiff and one J., who subsequently assigned his rights to plaintiff, with the intention of organizing and incorporating a company for the benefit of the Mutual Catholic Benevolent Association, purchased land and had it conveyed to defendant. The deed to defendant, although absolute in form, was in reality a mortgage to secure a loan for the purpose of paying for said land. The defendant at the time of the conveyance executed a controlling agreement. No stock had been taken and the company for which the land was intended was not organized or incorporated.

LENNOX, J., *held*, that defendant was not entitled to the land absolutely, and that plaintiff could compel defendant to specifically perform his agreement by conveying the land to plaintiff upon repayment of the loan.

F. D. Davis, for plaintiff.

J. H. Rodd, for defendant.

HON. MR. JUSTICE LENNOX:—The plaintiff and Janisse, who assigned to the plaintiff, proposed to organize a company to take conveyance of a plot of ground and erect a library building for the benefit of the Mutual Catholic Benevolent Association, at Sandwich. The plaintiff had awakened the interest of some of the members of this Association, and these members had committed themselves so far as to approve of the plaintiff and Janisse canvassing the situation and finding out what could be done.

It was hoped that a sufficient number of members of the Association would subscribe for stock of the company at ten dollars a share to enable the scheme to be carried out. Relying upon this, or, rather taking chances of being able to carry the undertaking through, Janisse and the plaintiff purchased the land in question from Parent and procured the conveyance thereof to the defendant.

The deed to the defendant, though absolute in form, was in fact a mortgage to secure repayment to the defendant of a loan to Janisse and the plaintiff of \$1,100, with interest at 7 per cent.