

Held, affirming the judgment, of the Supreme Court of the North-West Territories (1 N.W.T. Rep., part 3, p. 41), that as the evidence showed that when the note was given both R. and the creditor intended it to be the note of the company, and as R., as manager, was competent to make a note on which the members of the company would be liable, and as the form of the note was sufficient for that purpose, the defence set up could not prevail, and the plaintiffs in the action were entitled to recover.

Appeal dismissed with costs.

Ewart, Q.C., for appellants.

Ferguson, Q.C., for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[Dec. 24.]

WALKER & DICKSON ET AL.

Mortgagor and mortgagee—Indemnity—Mesne purchasers—Parties—Practice.

The equitable doctrine of the right to indemnity of a vendor of land sold subject to a mortgage applies only as against a purchaser in fact, and therefore where, at the request of the actual purchaser, the land in question was conveyed to his nominee by deed, absolute in form, but for the purpose of security only, this nominee was held not liable to indemnify the vendor.

It is not proper in the action for foreclosure to join as original defendants the intermediate purchasers of the equity of redemption, and to order each one to pay the mortgage debt and indemnify his predecessor in title.

Judgment of the Common Pleas Division reversed.

Moss, Q.C., and *G. B. Gordon* for the appellants.

Bain, Q.C., and *Kappeler* for the respondent *Dickson*.

Harrison for the plaintiff.

FARQUHAR & CITY OF HAMILTON.

Arbitration and award—Contract—Referee—Engineer—Municipal corporation.

Under a contract with a municipality for the laying of block pavements on certain streets, with a provision that "the decision of the city engineer on all points coming within this contract and specifications shall be final and conclusive, whether as to the interpretation of the various clauses, the measurements, extra work, quantity, quality, and all other matters and things which may be in dispute, and from his decision there shall be no appeal." The city engineer is not disqualified, in the absence of fraud or of bad faith, from deciding whether certain work is or is not extra work, and does or does not fall within the plans and specifications. The possible bias of the engineer in favour of the plans and specifications drawn by him is not sufficient to disqualify him.

Judgment of *ROSE*, J., affirmed on other grounds.

Oster, Q.C., and *McBrayne* for the appellants.

Muckelcan, Q.C., and *Watson*, Q.C., for the respondents.