

meantime, pending the result of the trial, the judgment and all proceedings taken or to be taken upon it to stand and be unaffected by the trial, just as if this appeal had been dismissed; costs in this Court to be costs in the cause. If the trial be not proceeded with within a month, this appeal to be dismissed with costs. Leave to apply if necessary.

SECOND DIVISIONAL COURT.

MAY 12TH, 1916.

LOVELAND v. SALE.

*Trusts and Trustees—Tenants in Common—Agency of One for the Others—Sale of Land by Mortgagee—Guaranty Given by Agent—Subsequent Sale to Company—Action by Co-owners to Set aside Transactions—Abandonment—Estoppel—Absence of Fraud.*

Appeal by the defendants from the judgment of SUTHERLAND, J., 8 O.W.N. 576.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

M. K. Cowan, K.C., for the appellants:

The plaintiffs, respondents, were not represented.

MEREDITH, C.J.C.P., in a written opinion, said that the four persons concerned in the purchase of the land in question, in the first instance, became tenants in common; but, though the rights of each, having an estate in the whole as well as in part of it, were wide (see *Kennedy v. De Trafford*, [1897] A.C. 180), they were not wide enough to embrace all that was done by the defendant Sale in respect of it: it must be taken to have been, by some arrangement among the owners, or by the force of circumstances, put in some sort of agency for all of them, with reciprocal liability in regard to the income from the property and the expenditures made upon it by the defendant Sale out of his own pocket. That agency necessarily came to an end when the land was sold to the defendant Little under and by virtue of the mortgage upon it; that sale being a real sale, notwithstanding that the purchaser was made secure from loss in so far as the agreement between the defendant Sale and him, made in connection with that sale, secured him. When the sale was made, the land had become unremunerative; the defendant Sale, still carrying on