

1853.

Matthews
v.
Holmes.

"2. That the evidence read in the cause was sufficient to prove the said transaction to be in fact a mortgage, because parol testimony of that fact was properly admissible in the cause, and sufficient evidence of that description was adduced; and because, even were that evidence not sufficient, the evidence of Mr. *Wilson* and Mr. *Becher*, and the Exhibit B by them referred to, afford written evidence of the real nature of the contract sufficient to take the case out of the operation of the Statute of Frauds, and sufficient to let in the parol testimony to prove the nature of the contract.

"3. That the evidence in the first and second reasons herein before referred to is the more clearly admissible, because it is not denied by the answer but in a manner admitted, that the transaction aforesaid was originally a mortgage.

Statement. "4. That although in the answer of the appellant it is suggested to the effect that the said *Alfred T. Jones* parted with his equity of redemption in the said premises to the said *Edward Matthews*, there is no sufficient evidence on the part of the appellant in support of any such allegation, and no evidence whatever of any sale or assignment, legal or equitable, of the said equity of redemption.

"5. And that for other reasons, and particularly for the reasons mentioned in the judgment of the Court below, the said decree ought to be sustained and this appeal dismissed with costs."

Owing to the frequent reference to the exhibits filed on the hearing, in some of their Lordships' judgments, it is thought advisable to set them forth here:

EXHIBIT A.

(In the original the numbers are written out in words.)

"Memorandum of an agreement entered into at London, Province of Canada, this 20th day of July, in the year of our Lord 1841, between *Aby B.*

NOTE.—Both parties admitted that an unsuccessful search had been made in the Government office for the assignment from *Alfred T. Jones* to *Matthews*; and the same could not therefore be produced.