

of title be so delivered: *Ex p. Arkwright*, 3 Mont. Dea. & De G. 129; *Lacon v. Allen*, 3 Drew. 579.

Nothing will be found in the Ontario cases at all differing from the English cases. The expression "equitable mortgage" is used in more senses than that we have been employing, in some cases. . . .

[Reference to *Dennistoun v. Fyle*, 11 Gr. 372; *Jones v. Bank of Upper Canada*, 12 Gr. 429, 13 Gr. 74, 78; *Aikins v. Blain*, 13 Gr. 646; *Royal Canadian Bank v. Cummer*, 15 Gr. 627; *Masuret v. Mitchell*, 26 Gr. 435, 437.]

Counsel for the defendant argued that an equitable mortgage cannot be created by the deposit of a deed where the legal title is outstanding in another than the depositor of the deed. I find, however, no trace of any such doctrine. On the contrary, in *Ex p. Glyn*, 1 Mont. Dea. & De G. 29, an equitable mortgage was held to cover land which had already been mortgaged to another. . . .

[Reference, also, to *Ex p. Bisdee*, 1 Mont. Dea. & De G. 333; *Lacon v. Allen*, supra; *Goodwin v. Waghorn*, 4 L.J. Ch. N.S. 172; *Simmons v. Montague*, [1909] 1 I.R. 87.]

I do not think the objection well-founded.

The plaintiffs will have judgment with costs. In view of the statements under oath of Miller, the assignee was justified in disputing the claim of the plaintiffs; but that does not disentitle them to costs.

BOYD, C.

JUNE 7TH, 1912.

CANADIAN GAS POWER AND LAUNCHES LIMITED v.
ORR BROTHERS LIMITED.

*Sale of Goods—Default of Vendor—Rescission of Contract—
Lien of Purchaser for Amount Paid—Right to Enforce by
Sale—Possession of Goods—Costs.*

Action to recover possession of an engine and other articles and for damages for detention.

The judgment of the Court of Appeal, in a previous action between the same parties, affirming the judgment of CLUTE, J., at the trial, is reported in 23 O.L.R. 616.

The present action was tried before BOYD, C., without a jury.