

The  
**Ontario Weekly Notes**

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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

DECEMBER 20TH, 1920.

\*ERNST BROS. CO. v. CANADA PERMANENT  
MORTGAGE CORPORATION.

*Mortgage—Two Parcels of Land Mortgaged by one Instrument Executed by two Several Owners—Subsequent Conveyance by one Owner of his Parcel to the Other, after Second Charge in Favour of Creditor—Assumption of both Debts by same Person—Absence of Direct Liability of Grantee to Creditor—Parties—Subrogation—Declaration—Costs.*

Appeal by the defendant Jeremiah McAsey from the judgment of ORDE, J., 47 O.L.R. 362, 18 O.W.N. 136.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

H. H. Davis, for the appellant.

H. J. Scott, K.C., for the plaintiffs, respondents.

MULOCK, C.J.Ex., read a judgment in which, after stating the facts, he said that there was much in the evidence of the appellant to support the view that he did not take beneficially under the conveyance from his brother Frank, but yet it was impossible to say, on the evidence, that the learned trial Judge erred in his finding that the transaction was an actual sale to the appellant free from any trust; and, after some hesitation, the learned Chief Justice had reached the conclusion that the fair inference was that the consideration of \$1,500 mentioned in the deed represented the obligation of the appellant to pay the mortgage of the defendant corporation and the plaintiff company's claim.

It is a settled principle of law that, where there are two funds to which, or to either of which as he may elect, a creditor may resort, and there is another creditor who is entitled to resort to only

\* This case and all others so marked to be reported in the Ontario Law Reports.