

of the general rule; and I think that the plaintiff must pay the costs of the action and appeal.

I have assumed that the plaintiff has the right to sue, since the defendant is herself administratrix: *Hilliard v. Eiffe* (1874), L.R. 7 H.L. 39, at p. 44, n., and other cases considered in *Empey v. Fick* (1907), 15 O.L.R. 19, at p. 24.

Appeal allowed.

OCTOBER 27TH, 1913.

ROSCOE v. McCONNELL.

Contract—Conveyance of Equity of Redemption to Mortgagee—Option of Repurchase—Construction of Written Document—Mortgage or Sale with Right to Repurchase—Evidence—Option to be Exercised within Fixed Period—Privilege—Strict Compliance with—Failure of Action for Redemption.

Appeal by the plaintiff from the judgment of MIDDLETON, J., at the trial, dismissing the action.

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

J. P. MacGregor, for the plaintiff.

G. H. Watson, K.C., for the defendant.

The judgment of the Court was delivered by MULOCK, C.J.:—The action is brought by Maglen Roscoe, daughter and administratrix of the estate of Thomas McConnell, deceased, to have it declared that a certain transaction carried out by deed from one James H. Simmons, bearing date the 20th December, 1906, to the defendant, of certain lands on Yonge street, in the city of Toronto, and by a contemporaneous agreement between the defendant and the plaintiff's father, was in fact a mortgage transaction, and not a bonâ fide sale to the defendant with a right of repurchase by the father.

The facts established by the evidence are as follows:—

The lands in question had been vested in fee simple in Simmons, but on a secret trust for Thomas McConnell, the beneficial owner, and at McConnell's request and for his benefit were mortgaged to certain persons, one of them being Samuel C. Smoke, who, on the 15th August, 1905, became mortgagee thereof for \$500, subject to the prior mortgages.