

The conveyance was executed, so was the mortgage, the latter bearing date 1st November, 1906. Plaintiff completed, as she says, what she was to do under the agreement. Defendant contends otherwise. Plaintiff required money to pay off liens, and defendant, on an adjustment of taxes and insurance, paid to his solicitor . . . \$1,472.47 in full of the \$1,500 mentioned.

It was, in my opinion, in the contemplation of the parties that in case defendant did any of the work mentioned in the agreement, it was to be done immediately after default by plaintiff, and the cost of such work was to be deducted from the . . . \$1,500; but that sum, as I have said, was paid over, and the transaction was treated as closed, subject only to the mortgage liability on the part of defendant and the liability of plaintiff under the agreement of 30th October. Defendant obtained her conveyance and had it duly registered, but refused to allow the mortgage to be handed over. Neither party asked me upon the trial to determine any question as to the completion of the houses according to the agreement, except so far as it was deemed necessary for the purpose of determining the question of plaintiff's right to get the mortgage.

It is in the interest of the parties and of justice that all matters between them in regard to the houses in question shall, as far as possible, be determined in this action.

I find that the delivery of the conveyance to defendant was not authorized except upon the cotemporaneous delivery of the mortgage to plaintiff. It was one transaction, and if to be completed as to title and conveyance before the performance by plaintiff of the agreement of 30th October, it was to be completed by giving neither party any advantage over the other—and defendant now has, as against plaintiff, a registered conveyance, while defendant withholds what plaintiff is entitled to have as a security to her for the balance of \$1,400. The mortgage has been executed, and defendant apparently made the necessary declaration of age, but the commissioner omitted to sign that declaration, and the solicitor, who is a subscribing witness to the execution of the mortgage, has not made the usual affidavit for the purpose of having the mortgage registered. Plaintiff is entitled to have this mortgage, in a condition complete and ready for registration, duly delivered by defendant to her.

I find that there is no liability on the part of plaintiff to defendant in respect of the completion of said houses or