

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Divl Court.]

[Feb. 6.

BEATTY v. FITZSIMMONS.

Mortgagor and mortgagee—Sale of equity of redemption—Indemnity against mortgage—Implied contract—Rebuttable presumption.

Where A. makes a mortgage upon his land to B. and then conveys the equity of redemption to C., the presumption or implication that C. is to pay off the mortgage or indemnify A. against it arises, not from anything contained in the mortgage or deed, but from the facts, and may be rebutted by parol evidence or otherwise.

The presumption or implication is of a contract.

Waring v. Ward, 7 Ves. 332, explained

W. R. Meredith, Q.C., for the plaintiff.

Moss, Q.C., and *Atkinson*, Q.C., for the defendants.

QUICK v. CHURCH.

Husband and wife—Action by wife for alienation of husband's affections—Married Women's Property Act.

In an action by a married woman against another woman for alienating the affections of the plaintiff's husband and depriving her of her means of support, the jury found that the plaintiff's husband left her and went to live with the defendant by her procurement, and lived and continued to live in adultery with the defendant by her procurement; and assessed damages to the plaintiff therefor.

Held, that the finding of the jury constituted a good cause of action at the common law; that the difficulty in enforcing it which formerly existed had been removed by the Married Women's Property Act, allowing the wife to sue without joining her husband, and giving her the damages recovered as her separate property; and that the action was therefore maintainable.

Fullerton, Q.C., and *J. A. Macdonald* for the plaintiff.

McCarthy, Q.C., for the defendant.

FAULKNER v. FAULKNER.

Contract—Covenant with mother to educate child—Action by child for breach of—Trust—Action by executors of mother—Measure of damages.

The defendants' mother having conveyed her farm to them, they mortgaged it to her in consideration of the conveyance and of \$2,500, and covenanted