The mortgage deed provided for the whole of the money becoming due in five years from its date, instead of being payable, as in the contract provided, in yearly instalments of $1,000. It was alleged by plaintiffs that the change was made by mistake, and that the mistake was not observed by them or by their solicitor until a year had elapsed.

It was proved, and found by LOUNT, J., that the defendant did not execute the mortgage under any mistake, but that both he and his solicitors observed the change made by plaintiffs' solicitor in the draft mortgage in the terms of payment, but had no objection thereto. LOUNT, J., held that if there was a mistake at all, it was a unilateral one, for which ordinarily there can be no reformation, and on that ground dismissed the action.

G. F. Shepley, K.C., for appellants.

A. B. Aylesworth, K.C., for defendants.

The judgment of the Court (OSLER, MACLENNAN, MOSS, JJ.A.) was delivered by

MACLENNAN, J.A., who, after setting out the facts, proceeded:—Without saying that in no case would the Court reform a conveyance which, by the mistake of one of the contracting parties only, was not made in conformity with an antecedent agreement in writing, I think it clear it ought not to do so in this case. Cases may be imagined in which the mistake by the one party was obvious to the other, and was deliberately taken advantage of by the latter. See Paget v. Marshall, 28 Ch. D. 255; May v. Platt, [1900] 1 Ch. 616, 622, 623. But this is not a case of that sort. It is, of course, competent to the parties to a written agreement for sale to carry it out with any variations and additions they think proper, and nothing is more common than to do so. In this case the plaintiffs' solicitor in his draft of the mortgage introduced several things into the mortgage which the agreement did not stipulate for . . . for the benefit and advantage of his clients, the plaintiffs. . . .

I think the defendant and his solicitors had a right to suppose that all these proposed additions to and changes in the terms of the contract, most of which were for the plaintiffs' benefit, were sanctioned by the plaintiffs. . . . If there was no more in the case than this, it would be quite impossible for plaintiffs to succeed.