

RIDDELL, J.

JUNE 7TH, 1912.

*ZIMMERMAN v. SPROAT.

Equitable Mortgage—Deposit of Title Deeds as Security for Debt—Oral Evidence—Conflict—Finding of Trial Judge—Legal Estate not in Depositor—Assignee for Benefit of Creditors—Costs.

Action by creditors of one Miller, against Miller's assignee for the benefit of creditors, for payment of the plaintiffs' debt and a declaration that the plaintiffs were equitable mortgagees of Miller's land.

P. McDonald, for the plaintiffs.

S. G. McKay, K.C., for the defendant.

RIDDELL, J.:— . . . Finding that, although the debtor (Miller) had not paid for his farm in full, but had given a mortgage to the vendor for a large part of the purchase-price, nevertheless the vendor had given him a deed of the farm, the plaintiffs demanded the delivery to them of the deed as security for the debt—and, for fear of fire, they also demanded the insurance policies on the building.

On conflicting evidence, I find as a fact that it was agreed that Miller should deliver to the plaintiffs the deed and the insurance policy as security for the said debt; and that he did so deliver the said documents. . . .

While, by reason of the Registry Acts in force in our Province from an early day, the doctrine of equitable mortgages of this character is foreign to our ordinary ideas, there can be no doubt that our law is much the same as the English in respect of such mortgages. The kind of equitable mortgage now under consideration is that which is spoken of by Fisher in sec. 27 of his book on Mortgages. . . .

The first reported case seems to be *Russel v. Russel* (1783), 1 Bro. C.C. 269. The doctrine has been repeatedly regretted . . . but it is too firmly established to be altered except by legislation.

The intent to create an equitable mortgage by delivery or deposit of writings may be established by parol evidence alone: *Russel v. Russel*, supra; Ex p. Kensington, 2 Ves. & B. 79; Ex p. Haigh, 11 Ves. 403; Ex p. Mountfort, 14 Ves. 606. And it is sufficient if only some or one of the material documents