

any amount up to \$1,500 in priority to this mortgage; said mortgagee will consent thereto and execute any necessary documents to permit of such priority, and will consent to renewal or replacement of such mortgage whenever necessary, at the cost, however, of the said mortgagor."

This mortgage was executed by the mortgagor only, and Mrs. Lyng was not asked to sign it. The evidence that she knew of the insertion of any such clause is most unsatisfactory. It is said to have been read to the mortgagor, and it is said that she was present and could have heard if she had tried. No explanation was given to her at the time the transaction was closed; it being assumed that she knew.

Mrs. Lyng states that she left the transaction entirely in the hands of her husband. He is now dead. She has no recollection of the details of the transaction, and probably never understood it at all, but merely signed, at the request of her husband, documents which he may or may not have understood.

Kling placed a first mortgage upon the property, and then brought this action to have the agreement reformed and for specific performance. He has since sold the property, so that the transaction cannot be rescinded.

There being no contradiction of the solicitor's statement, there is nothing to lead me to believe that he is not stating the facts; and I do not see how I can disregard his evidence. Accepting it, I think that the contract must be reformed; although in adopting this course I fear that I may be doing the defendant injustice. Had the husband been alive, and had he contradicted the plaintiff and his solicitor, I would not have given effect to their evidence; and it may be a serious misfortune to the defendant that her husband, manifestly a most material witness on her behalf, is not now here to give his evidence. Yet, weighing this, and realising that the husband was alive when the defence of the action was undertaken, I cannot bring myself to disregard the evidence given.

The mistake in the preparation of the agreement is the fault of the plaintiff and his solicitor, and I think I am warranted, upon the cases, in giving relief only upon the term that, as a condition precedent, the plaintiff pay, not only the costs of the action, but all the instalments of principal and interest which have fallen due under the mortgage.