thereof, arising out of the transaction called "an exchange of lands:" Norton on Deeds, 2nd ed., pp. 201, 205; Rex v. Inhabitants of Llangunnor (1831), 2 B. & Ad. 616.

Upon the oral evidence admitted, it was clear that the deed was made to the appellant not as a purchaser, but as the nominee of the respondent, and that the mortgages were, by virtue of the contract between Power, the real owner of the land, and the respondent, to be assumed by Power as part of the consideration for the exchange of lands owned by the respondent. This satisfied the terms of the deed and was not contradictory of it. There was no covenant by the appellant to pay these mortgages nor to indemnify the respondent against them; but the respondent stood upon the deed as containing a contract with the appellant that the latter would "assume, pay, and discharge" the said mortgages. This was not the true effect of the agreement referred to and of the deed in question as explained thereby.

In the absence of an express agreement, any liability would primâ facie be upon an equitable obligation arising from the relationship of vendor and purchaser—a position which is not established here.

The cases of Corby v. Gray (1887), 15 O.R. 1, and Walker v. Dickson (1892), 20 A.R. 96, are not in conflict with Small v. Thompson (1897), 28 S.C.R. 219.

The equitable obligation of the purchaser to indemnify the vendor arises only when the purchaser is actually one in fact; this is not a case in which the frame of the deed precludes the reception of evidence to contradict the consideration as expressed therein.

The appeal should be allowed with costs and the action dismissed with costs.

MEREDITH, C.J.O., and GARROW and MACLAREN, JJ.A., concurred.

MAGEE, J.A., dissented, for reasons stated in writing.

Appeal allowed.