

of the loan an absolute conveyance of the land, giving plaintiff a contemporaneous bond in the penal sum of \$1,000, conditioned for the reconveyance of the lands on payment . . . of \$550, with interest at 8 per cent., on 11th October, 1896. The bond recites that the deed was "given for securing \$550 and interest thereon," etc.

Defendant has been in possession since the date of the conveyance, has made improvements thereon, has been in receipt of the rents and profits, and resists plaintiff's claim to redemption. . . .

Reading the conveyance and bond together as part of one transaction, and taking into consideration the evidence given at the trial, the conclusion is irresistible that the transaction was a loan . . . and that the conveyance was given merely for the purpose of securing to defendant the return of the loan with interest.

Judgment for plaintiff as prayed with costs.

MACTAVISH, Co. J.

MAY 16TH, 1903.

TRIAL.

MATTHEWS v. WELLER.

*Husband and Wife—Joint Liability—Evidence—Alternative Liability—Election.*

Action against two defendants, husband and wife, to recover the balance of the price of lumber sold and delivered.

Trial at Cobourg before MACTAVISH, Co.J., sitting for FALCONBRIDGE, C.J.

W. L. Payne, Brighton, for plaintiff.

W. B. Northrup, K.C., for defendants.

MACTAVISH, Co.J.—The only question to be determined is, whether defendants are jointly liable to plaintiff for the amount of the claim sued for. The defendant Alice J. Weller does not dispute her liability.

There is not, in my opinion, any evidence to support a joint liability of husband and wife. This case comes within the principle of the decision in Davidson v. McLelland, 32 O. R. 382.

If there is an alternative liability, I think plaintiff has elected to accept the liability of the wife: Morel v. Westmoreland, [1903] 1 K. B. 64.