

Had she been entitled to succeed, her damages would reasonably have been assessed at \$2,000.

The action should be dismissed, and with costs, if demanded.

SUTHERLAND, J.

APRIL 5TH, 1917.

WILLIAMS v. BRAYLEY.

Deed—Conveyance of Land—Cutting down to Mortgage Security—Redemption—Mortgagee in Possession—Lease of Premises—Negligence in not Obtaining Adequate Rental—Failure to Prove—Findings of Fact of Trial Judge—Interest—Costs.

Action for a declaration that a certain conveyance of land to the defendant, though absolute in form, was merely a security for the repayment of \$1,000 and interest by the plaintiff to the defendant, and for redemption.

The action was tried without a jury at Toronto.

A. C. McMaster, for the plaintiff.

J. R. L. Starr, for the defendants, the executors of the original defendant, who died pendente lite.

SUTHERLAND, J., in a written judgment, said that the plaintiff, as the owner of the land afterwards conveyed to the defendant, had first sold it to one Lawless for \$7,000, subject to Lawless assuming a mortgage for \$3,450 and interest at 5½ per cent. thereon.

In his statement of claim the plaintiff alleged that the original defendant did not enforce payments on the agreement with Lawless as they accrued due, but had rented the premises to Lawless at an inadequate rental, and had neglected to collect the proper rents and profits therefrom; and he claimed damages against the defendant as a mortgagee in possession.

The defendant, in his original statement of defence, alleged that he had received and accounted for all the rentals, and had been always ready and willing to reconvey the property on receipt of \$1,000, the balance of interest due, and his costs.

The defendant having died before the action came to trial, it was revived in the name of his executors; and an amended statement of defence was delivered, wherein it was alleged that it was