

and never came into effect as securities, and should be set aside and the registration thereof cancelled. These conclusions were reached mainly upon the findings of the trial Judge and the evidence of the plaintiff himself.

The learned Judge set out the history of the transactions between the plaintiff and the defendant, in which one Boehmer was concerned, and made references to and gave extracts from the testimony of the plaintiff.

The plaintiff, the learned Judge said, was not guilty of any fraud or of any conspiracy with Boehmer in the transactions; and, according to the plaintiff's own statement, when the mortgage was taken, his intention was to make the advance. He withdrew from this position, and, when he did so, was bound to regard the whole transaction as at an end and yield up all the security which he had obtained under the assurance that the advance would be made.

The mortgage made by the defendant and the assignment of the John Kelly mortgage were parts of the same transaction, and should stand or fall together. There should be a declaration that the mortgage and assignment were invalid and void, and they should be set aside and the registration thereof cancelled, and this action, and also the action pending in respect of the John Kelly mortgage, should be dismissed. The two promissory notes for \$200 and \$300 respectively should be delivered up to the defendant to be cancelled. The \$500 note made by the defendant, dated the 30th September, 1916, payable to the order of Boehmer and endorsed by him to the plaintiff, should be declared valid and binding upon the defendant for the full amount thereof, and, if he so desired, the plaintiff might have judgment for the amount, less the defendant's taxed costs of her defence of this action and of this appeal and the costs of her defence of the action brought on the John Kelly mortgage.

MULOCK, C.J. Ex., and KELLY, J., agreed with CLUTE, J.

RIDDELL, J., agreed in the result.

Appeal allowed.