

tate; and, having regard to the fact that under the Land Titles Act a security on land is to be created by a charge, the legal estate remaining in the owner, the proper course is, instead of recording the same in the books of the office as a link in the chain of title, to deposit it with the proper Master of Titles, and thereupon that officer should enter on the register the plaintiffs as owners of a charge, with such particulars to be taken from the mortgage as are required by sub-sec. 2 of sec. 30 of the Land Titles Act.

Subject to this variation, the appeal is dismissed with costs.

CLUTE, J.:—I am of the same opinion. . . . Section 115 of the Land Titles Act was passed expressly to cover a case like the present. The trial Judge properly held that the plaintiffs were entitled as mortgagees in fee. The register does not shew this, and it should be rectified in the manner suggested by the Chief Justice.

With this variation, the appeal should be dismissed with costs.

RIDDELL, J.:— . . . There are only two matters that are open: (1) what order, if any, should be made under sec. 115 of the Act R.S.O. 1914 ch. 126 or otherwise; (2) costs.

In view of the many difficulties attending amendment of the records of a Master of Titles, I think it not wise to order any change under sec. 115, when all the advantages derivable from that course can be easily and simply obtained by declaring the defendant trustee for the plaintiffs to the extent of their mortgage . . . in priority to the trusts of his assignment.

Then as to costs. On the 24th February, 1914, the plaintiffs' solicitors wrote the defendant saying that they had already pointed out to him that the plaintiffs had in 1910 obtained a mortgage from S. A. Campbell, which they were unable to register, but that recently they had procured a mortgage in proper form, and "we did not consider that your assignment could avail against this." The solicitors go on to say that the plaintiffs had sold the property and wanted to get rid of the assignment, and ask an answer whether the defendant will release the property. The very same day, the defendant answered: "On statement of facts made by you we cannot see our way to allow you to have priority over assignment." After waiting some twenty days, the plaintiffs issued their writ. That the plaintiffs were justified in asking a declaration of their right is clear. That