

Full Court.]

STARKE v. REID.

[Jan. 10.]

*Mortgage—Redemption—Right to assignment—Right to reconveyance—R.S.O. c. 102, s. 2.*

The plaintiffs, being mortgagees of certain lands, afterwards acquired by transfer a second mortgage on the same property, and now sued the covenantors in the former mortgage, who demanded, upon payment of the amount, of the former mortgage, a reconveyance subject to equities of redemption existing in other parties.

*Held*, that the defendants were entitled to this, and that the plaintiffs could not tack the amount of the second mortgage to the first and require payment of both.

*Kinnaird v. Trollope*, 39 Ch.D. 635, followed.

*Per* BOYD, C. : When the mortgagor who pays under his covenant has assigned the equity of redemption, the form of conveyance should be of the legal estate to the mortgagor who pays subject to the equity of redemption of his assignee, and the mortgage should itself be handed over for securing him in the amount paid upon it.

*Moss*, Q.C., for the plaintiffs.

*F. Hodgins and Coatsworth* for the defendants.

Full Court.]

MOLSONS BANK v. HEILIC.

[Jan. 10.]

*Principal and surety—Security held by creditors—Release of same without consent of surety—Rights of surety—Judgment.*

The plaintiffs sued the defendant as endorser of a promissory note made by a customer, of which notes they held a number endorsed by various parties, and also a mortgage from the customer on certain lands to secure his general indebtedness. Before this action the plaintiffs had released and discharged certain of the lands comprised in the mortgage, without the consent of the defendant.

*Held*, on appeal from the judgment of ROBERTSON, J., 25 O.R. 503, that the plaintiffs were entitled to judgment against the defendant for the amount of the note, but without prejudice to the right of the latter to make the plaintiffs account for their dealings with the mortgaged property held for the benefit of the endorsers when that security had answered its purpose or the debt had been paid by the sureties, or when in any other event the application of the moneys from the security could be properly ascertained.

*Crerar*, Q.C., and *P. D. Crerar* for the plaintiffs.

*J. W. Nesbitt*, Q.C., for the defendant.

ROSE, J.]

JOHNSON v. JONES AND TOBICOKE.

[Jan. 10.]

*Indians—Capacity to make a will—Female Indian—43 Vict., c. 28, ss. 16-20 (D.)—R.S.C., c. 43.*

*Held*, that an Indian, male or female, may make a will, and may by such will dispose of any lands or goods or chattels, except as far as such rights may be interfered with by the Indian Act or other statute.