

GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A., agreed in the result, on the ground that the appellant's right was a right to a private way.

*Appeal allowed.*

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NOVEMBER 9TH, 1915.

\*CAMPBELL v. DOUGLAS.

*Mortgage—Conveyance of Land Subject to—Obligation of Grantee to Assume and Pay off Mortgage—Oral Evidence to Shew Real Transaction—Admissibility—Nominal Purchaser—Exchange of Lands.*

Appeal by the defendant from the judgment of LENNOX, J., 8 O.W.N. 501.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

W. D. Hogg, K.C., for the appellant.

J. R. Osborne, for the plaintiff, respondent.

HODGINS, J.A., delivering judgment, said that the deed was not the whole transaction. Evidence was admitted, and properly so, to shew the circumstances out of which the giving of the deed arose, and effect should be given to it: *Mills v. United Counties Bank Limited*, [1912] 1 Ch. 231. The date of the deed was the 15th January, 1913, and the consideration stated in it was "an exchange of lands and \$1." It conveyed land, subject to certain mortgages, the description of which was followed by the words, "the assumption of which mortgages is part of the consideration herein." The habendum does not mention these incumbrances, and there is no express covenant by the appellant to assume and pay them, nor did he sign the deed. The assumption of these mortgages as part of the consideration evidently referred to the exchange of lands—which was the only portion of the named consideration set forth in which the assumption of the mortgages could be comprehended. This was not a case of such precise expression of a consideration as would preclude the admission of parol evidence to explain the full extent and nature

\*This case and all others so marked to be reported in the Ontario Law Reports.