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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

MAY 7TH, 1918.

CUNNINGHAM v. KELLY.

Mortgage—Security for Advances—Promissory Notes—Mortgage Assigned as Collateral Security—Action on Mortgage—Counterclaim—Declaration of Invalidity of Mortgage and Assignment—Evidence—Findings of Trial Judge—Appeal—Costs.

Appeal by the defendant from the judgment of Britton, J.,
13 O.W.N. 342.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL,
and KELLY, JJ.

A. Cohen, for the appellant.

J. D. Falconbridge, for the plaintiff, respondent.

CLUTE, J., in a written judgment, said that the action was upon a mortgage dated the 27th October, 1916, to recover \$1,000, and in default of payment for foreclosure. The defendant denied that she was liable upon the mortgage and (by counterclaim) asked for a declaration that the mortgage was invalid and a direction that the registration thereof should be vacated. The defendant also asked that the assignment of another mortgage, called the John Kelly mortgage, for \$1,600, by herself to the defendant, should be declared invalid and should be set aside and the registration thereof vacated. She also asked for the delivery up of three promissory notes for \$200, \$300, and \$500 respectively.

The learned Judge said that he was of opinion that the mortgage for \$1,000 and the assignment of the \$1,600 mortgage were invalid