

of December, 1906, in substance was an extinguishment of Thomas McConnell's equity of redemption, and secured to him merely an option to re-purchase on the terms set forth in the agreement, and I do not think the plaintiff, a mere volunteer, can be heard to make a claim inconsistent with the attitude of Thomas McConnell through whom she claims.

The plaintiff also charges undue influence but wholly fails to establish the charge, which is unsupported by any evidence.

I therefore think this appeal should be dismissed with costs.

HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH agreed.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

OCTOBER 27TH, 1913.

BATES v. LITTLE.

5 O. W. N. 180.

Contract—Sale of Goods—Chattels in Moving Picture Theatre—Refusal of Lessor to Consent to Assignment of Lease to Purchaser—Condition—Evidence — Refusal of Lessor brought about by Defendant—Waiver—Estoppel—Cheque—Action on—Appeal.

Action upon a cheque for \$450 given as part payment upon the purchase of certain chattels appurtenant to a moving picture theatre by the defendant from the plaintiff. Defendant alleged the transaction had fallen through by reason of the refusal of the lessor of the theatre premises to consent to an assignment of the lease thereof to the defendant.

BELL Co.C.J., dismissed the action with costs.

SUP. CT. ONT. (2nd App. Div.) *held*, that the defendant by his acts was estopped from denying the validity of the purchase.

Appeal allowed and judgment entered for plaintiff for \$450 and costs.

Appeal by plaintiff from judgment of the Judge of the County Court of the county of Kent dismissing action brought to recover \$450, the amount of a cheque given as part payment for certain chattels purchased by defendant from plaintiff.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.