

D. O. Cameron, for plaintiff.

G. Lynch-Staunton, K.C., for defendants.

BRITTON, J.—The mortgage in question bears date the 17th September, 1889, and is for \$1,500 payable in 10 yearly instalments of \$150 each, with interest at 6 per cent. per annum. It was made by the defendants, husband and wife, the property apparently belonging to his wife, in favour of J. M. Lottridge and others. The husband kept an hotel in the house upon the premises until about 25th April, 1893, when the property was sold to Frank Howes. The mortgage had then been reduced to \$1,200. Frank Howes was to assume the mortgage, and pay the balance in cash. At this time J. M. Lottridge was the owner of the mortgage, the other mortgagees having assigned to him. The account of the transaction given by the husband defendant is that he told Frank Howes he would sell subject to the mortgage, if Lottridge would take Howes for the \$1,200. He says he introduced Howes to Lottridge, and said to Lottridge: "If you will take him so as to have no more claim on me, I will sell." Lottridge confirms this, so far as he recollects the transaction. Nothing was said about the wife or to her, although she was the owner of the property. . . . Frank Howes went into possession, and continued the hotel business. The mortgage in question contained the usual covenants for payment and to insure. . . . The building was destroyed by fire in October, 1895. The insurance had been allowed to expire. The person interested in this suit—the real plaintiff—is W. W. Howes, father of Frank Howes, the mortgage having been assigned to Cornell, the nominal plaintiff, for the purpose of collection. . . .

The real defence relied on by defendants is, (1) an alleged agreement between J. M. Lottridge and the defendants to release defendants and look only to the property and to Frank Howes, of which agreement it is said that W. W. Howes was aware when he purchased the mortgage, and that he bought knowing and agreeing that he was to look only to the property and to Frank Howes, and that he was not to look to either of the defendants; and (2) that W. W. Howes, after the purchase of the mortgage, went into possession and was until time of fire mortgagee in possession, and that it was his duty to insure and keep insured, and by reason of his neglect he cannot recover. . . .

There is no evidence that Frank Howes was a trustee for W. W. Howes and that W. W. Howes was the real purchaser of the land from Mrs. Hourigan. Nor does it appear that W. W. Howes in purchasing the mortgage was a trustee for Frank Howes, or that he was acting for Frank. . . .