

affect the mortgagees' right to repayment. The money lent formed no part of the value or price put by either party upon his lands in making the exchange: the money was no part of the consideration on either side. The fact that the mortgagees had contracted, in the exchange transaction, to pay off part of a first mortgage upon the land they conveyed to the defendant, and had not done so, and that foreclosure proceedings were pending upon that mortgage, could not be a defence to this action—though it might sustain a counterclaim for damages for breach of that contract. No such counterclaim was made. The defendant also contracted, with the other parties to the exchange, that he himself would pay off part of that first mortgage, which covered other land than that which he got in the exchange; and in his depositions he said: "I kept the interest up and made certain payments, and was able to meet all payments up to the time the war started; after that, I was placed so that I couldn't." the defendant could not compel the other parties to pay their share if he were not able to pay his.

The case was not one of an assignment of a chose in action, such as the Conveyancing and Law of Property Act provides for, but was an assignment of a covenant made by the defendant with the mortgagees, their "heirs, executors, administrators, successors, and assigns." A transfer of the mortgage security alone would effect in equity a transfer of the debt, and notice of it would not be necessary except for the purpose of intercepting payments which might be made, in ignorance of the assignment, by the mortgagor.

Soon after the commencement of this action, the plaintiff made an absolute assignment of the mortgage in question to one Fussell; but some months afterwards Fussell reassigned the mortgage to the plaintiff. No order for leave to proceed was obtained after either assignment. Proceeding without an order was in each case irregular. It was not a mere matter of form. If no proceedings were taken during Fussell's ownership, there was no need for an order until the plaintiff acquired title again; but an order should have been applied for then. The defendant was entitled to have the question of these transfers investigated and to have it proved that the property was really revested in the plaintiff.

In all the circumstances, the defendant was entitled to be made secure by the addition as parties to the action of the mortgagees and of the assignees, at any time, of the mortgage, in such a manner that, if they had any interests in the matters in question, such interests might be bound by the judgment in the plaintiff's favour.