

not apply it to this case. If the plaintiff had already sued Thomas upon the guarantee instead of upon the cheque, and recovered judgment against him, according to the rule of law laid down in *King v. Hoare*, and by the House of Lords in *Kendall v. Hamilton*, the plaintiff could not have sued the present defendant. Was there any case which said that when the judgment against the one joint contractor was not upon the guarantee, that rule of law applied? The case of *Drake v. Mitchell* was directly to the contrary, a case decided in 1803 by Lord Ellenborough and three other great judges. That case showed that the action must have been for the same particular cause of action. There had been no judgment recovered against Thomas in respect of the particular cause of action upon which the present action was brought against the defendant. The former cause of action was upon the promise by Thomas on the cheque to pay on demand. The present cause of action was upon the guarantee, and Thomas had never been sued in respect of that cause of action. No doubt the decision in *Cambefort v. Chapman* was contrary to this view. Which decision ought the Court to act upon? *Drake v. Mitchell* had been standing since 1803, and his judgment went with that case, and not with *Cambefort v. Chapman* and the earlier case had not been overruled or touched by *Kendall v. Hamilton*. The argument that the defendant could not have Thomas joined as a co-defendant in the present action, and that therefore the plaintiff ought not to be allowed to recover in the present action against the defendant, was not well-founded. The present action was upon the joint contract, and the defendant could have taken out a summons to have Thomas joined, but he did not do so. The case was within the decision in *Drake v. Mitchell* and the decision in *Cambefort v. Chapman* was wrong and must be overruled.

Ropes and Rigby, LL. JJ., delivered judgment to the same effect.

COURT OF APPEAL, ENGLAND

Wigram v. Buckley

The doctrine of *lis pendens* is inapplicable to *choses in action* and to all personal property other than chattels real.

The plaintiff, being first mortgagee of the book debts owing to the defendant, brought an action to enforce his mortgage, and obtained the appointment of a receiver and an injunction to restrain the defendant dealing with the book debts. This action (which was still pending) was registered as a *lis pendens*. Neither the plaintiff nor the receiver gave any notice whatever to the book debtors of the defendant, nor did the receiver take possession. Afterwards the defendant executed another mortgage of the book debts to B., who thereupon gave notice to the book debtors. B. had then no