

as it had passed from the ownership of the mortgagee to that of the creditor. So matters remained till the sale and conveyance of McGibbon to the mortgagor Lowery, a year afterwards. The effect of this was to invest the mortgagor with a new interest in the land as conveyed to him by the sheriff's purchaser. That new interest (apart from the covenants of the short forms deed) would fall under the operation of the writ against lands, which was still in the sheriff's hands till August, 1899. On the non-renewal of the writ, the equitable estate held by Lowery would be exempt from the execution, till there was placed in the sheriff's hands the alias writ of 1902, as to the effect of which the contest arises.

The covenants relied upon are No. 4, as to incumbrances, and No. 8, as to the release of all claims. Now, when the land was in the hands of McGibbon, it was not subject to any incumbrances by reason of this judgment and execution. It did become subject to the execution issued by or for Stovel in 1902, which would rank in priority only from that date. There was nothing effecting the land in the mere judgment till execution against lands issued thereon. The writ left in the sheriff's hands till 1899 was spent by non-renewal and may be left out of the case. All claims possessed by McGibbon on the equitable estate were conveyed by him when he made the conveyance. It was not till after the conveyance to the mortgagor that this claim under the execution became possible; and then the claim arises by operation of law for the satisfaction of a judgment debt (still unpaid by Lowery) out of the new estate acquired by him from the sheriff's purchaser.

I do not read the expansion of No. 4 as embracing a judgment or execution obtained or issued by the grantor, but rather one which effects the lands in contravention of his absolute ownership, i.e., one issued or enforceable against the lands in his hands, and one which as against his vendee he ought to pay.

As to the unique provision No. 8, it has its origin in the abortive legislation of Lord Brougham in the English Short Forms Act of 1845 (8 & 9 Vict. ch. 119, Imp.), which, after remaining in disuse for many years, was finally repealed in 1881 by sec. 71 of the Conveyancing Act of that year. It is not commented on in the books, and there have been, I believe, no cases on the provision for the "release of all claims on the land" either in England or in this Province, where it was introduced in 1846 (9 Vict. ch. 6, C.). But I take it not to be applicable to this transaction. The protection afforded by the release clause is as against all claims which the