

Robinson, or of any other case, could have been successfully invoked by a plaintiff under such circumstances.

It does not appear to have been cited in the argument, and the idea that it has been weakened, if not overruled, seems to have arisen from a misconception of what was said by Mr. Justice Strong, who was the only judge who referred to it.

At page 479 his lordship says: "There is no direct privity of contract between the respondent Balfour and the appellants. The appellants Williams and Slaven did not execute the indemnity agreement, and, of course, were not liable upon it in any way; and, as the Chief Justice of Manitoba has shown, Vanwart is in exactly the same position—Deacon, who assumed to execute it in his name, having no authority whatever to do so. This being the state of facts, I know of no principle which entitles the mortgagee to a personal order against them. . . . The weight of authority in Ontario is altogether against such an order: the case of *Campbell v. Robinson*, as Chief Justice Taylor has pointed out, is clearly distinguishable, the personal order there being made for the benefit of the mortgagor, who had become a mere surety for the purchasers of the equity of redemption, and was therefore considered, on that distinct ground, entitled to indemnity from them." Then follows the passage which seems to have given rise to Mr. Patterson's notion: "I should not, however, be inclined to follow even that case, as I do not see how the question could, on the pleadings, have been properly raised between the co-defendants."

The reason given by his Lordship for his disinclination to "follow" or apply the principle of *Campbell v. Robinson* in the case before him is perfectly clear and satisfactory, the pleadings in the latter case being so totally unlike those in the former. But, as if to remove any doubt upon the point, his Lordship adds: "Such cases as *Campbell v. Robinson* do not, however, apply at all."

I think I may be excused for not noticing *Williams v. Balfour* in my article.

But the view I advanced, respecting the right and duty of a mortgagee to add all the intermediate owners of the equity of redemption as original defendants, was based rather upon the modern rights of principal and surety, as administered under the Judicature Act, than upon the particular decision in *Campbell v. Robinson*.