

without notice of first mortgage—*Defence—Registry Act, R. S. O. ch. 95, sec. 8.*—Y. being the owner of certain land, mortgaged it with other lands to the M. P. B. Society by mortgage, dated July 12th, 1873, registering July 14th, 1873. Subsequently being desirous of selling part and paying off the mortgage and getting a new loan, he, by an agreement in writing, arranged with the society to leave the mortgage standing, take a further loan of \$700, and have certain of the lands (of which the lot in question was part) released by the Society. A second mortgage for the \$700 advance was prepared and executed dated February 1st, 1875, registered February 11th, 1875, which by mistake as was alleged included all the lands in the first mortgage; and a release dated February 9th, 1875, was duly executed by the Society releasing the lot in question from the operation of the mortgage of July 12th, 1873, and was afterwards registered March 20th, 1876.

B., the plaintiff, being aware of the agreement, but unaware that the second mortgage included the lot in question, which should have been omitted, loaned Y. certain moneys, and took a mortgage dated May 21, 1877, registered June 6th, 1877, to secure the payment thereof. The Society assigned the second mortgage and all moneys secured thereby to the defendants by assignment dated March 1st, 1880, registered January 17th, 1881, and by deed dated March 1st, 1882, registered June 2nd, 1883, Y. conveyed his equity of redemption to B.

In an action by B. to correct the mistake by compelling the defendants to convey the lot in question to B., it was held (affirming the judg-

ment of Ferguson, J.) That the combined operation of R. S. O. ch. 111, s. 81, and R. S. O. c. 95, s. 8, formed a complete defence, and that the defendants as assignees of the mortgage for value, having the legal estate, might defend as purchasers for value without notice, and claim also the protection of the Registry Act, as against the plaintiff a subsequent purchaser or mortgagee from the original mortgagor.

Semble that even as against the mortgagor the defendants would also be entitled to prevail. *Bridges v. Real Estate Loan and Debiture Co.*, 493.

Discharges of mortgage—Reconveyance—R. S. O. c. 111, s. 67.—*See DOWER, I.*

REPLEVIN.

Pound-keeper—Constable—Notice of action.—*Replevin* will not lie against a pound-keeper. In this case the sheep which were impounded were grazing upon an open common with the consent of the owner thereof, and were being herded by a boy in charge of them with a view to driving them home, when they were taken possession of by two constables, against the boy's remonstrance:

Held, that the sheep were not "running at large," in contravention of a by-law of the municipality on the subject, and that the constables were liable in replevin for impounding them; but that replevin would not lie against the pound-keeper.

Held, also, that the constables were not entitled to notice of action.

Per O'CONNOR, J.: because although they were public officers, it was no part of their duty as such