

cial falls due, "in such case the said mortgagor, his heirs or assigns, shall, on payment of all arrears under these presents, with lawful costs and charges in that behalf," be relieved from payment of the principal.

(4) Lastly, the proviso for quiet possession is also extended to the heirs and assigns of the mortgagor.

The rights of the purchaser, as an assign of the mortgagor, were thus contemplated and provided for in the mortgage itself, and they are rights which the mortgagee is bound to respect.

The flimsy garments of our object are no longer sufficient to conceal the old stump; and we therefore conclude that whatever else may be wanting it is not privity.

But we do not contend that by establishing privity between the parties we thereby establish any liability. That is quite another matter, and depends upon the terms, both express and implied, of the contract itself.

It may be said, for instance, that the proviso for defeasance operates merely as a right or licence to the mortgagor's assigns; whereas the covenant for payment, which imposes a liability, purports to bind only the mortgagor, his executors and administrators. The proviso, in its extended form, reads as follows:

"(2) Provided always, and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administrators, or assigns, or any of them, do and shall well and truly pay, or cause to be paid, unto the said mortgagee, his executors, administrators, or assigns," etc., etc.

Now, whether this proviso operates as a mere licence or as a covenant, in either case the purchaser, as we have shown, is privy to it, and is entitled to enforce his right to pay off the mortgage. As a matter of construction, a similar form of proviso, in England, has been held to have created a covenant: see *Brookes v. Drysdale*, L.R. 3 C.P.D. 52. Be that as it may, we think the direct liability of the purchaser to the mortgagee may be shown by other and weightier considerations.

The only obstacle which lies in our way at this stage of the journey is the well-established rule of law which says that the legal effects of a contract are confined to the contracting parties.

If, as we have suggested, the mortgage contract may be regarded as an offer to any one who will accept the position of an assign of either party, the obstacle disappears. The pur-