

law to prevent you from giving it effect, effect ought to be given to it," and that seems to be the principle on which the present case was decided.

PRACTICE—SALE, BY COURT, OF LAND SUBJECT TO MORTGAGES—CONVEYANCE, FORM OF—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44 & 45 VICT., c. 41), s. 70—(R.S.O., c. 44, s. 53, s-s. 10)—PUISNE INCUMBRANCERS.

In *Mostyn v. Mostyn*, (1893) 3 Ch. 376, which was an administration suit, the trustees of the will of the testator were directed to sell, with the approbation of the court, certain lands, which were subject to several mortgages, and the first mortgagees were authorized to retain the purchase money in reduction of their charge. The puisne incumbrancers were not parties to the proceedings. The conditions of sale stated that the first mortgagees would join in the conveyance to the purchasers and release the property from their debt, and, as their debt exceeded the probable amount of the purchase money, no subsequent incumbrance would be abstracted or released, and that the purchasers should not be entitled to require the conveyance of any person having only an equitable interest bound by the order for sale, other than the trustees who were the vendors. The first mortgagees agreed to join in the conveyance, but wished to insert, after the granting words in the deed, the words, "according to their estate and interest in the premises, and not further or otherwise," and the words, "subject to such right or equity of redemption, if any, as is subsisting in the said hereditaments, and is not by these presents conveyed or released." The purchasers objected to these words, and Kekewich, J., overruled their objection; but the Court of Appeal (Lopes and Smith, L.J.) were of opinion that the purchasers were protected against the equitable interests of the puisne incumbrancers by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), s. 70 (R.S.O., c. 44, s. 53, s-s. 10), and that they were entitled to an absolute conveyance in fee simple; and if the first mortgagees, who were not parties to the proceedings, declined to forego the objectionable clauses, the purchasers were entitled to be relieved from the contract. The Court of Appeal also held that, under s. 70, the puisne incumbrancers were bound by the order for sale, although they were not parties.