

form absolute, whatever the agreement between him and Collins may be. I do not think Rogers is affected by the dealing which took place."

Judgment was accordingly given, ordering:

- (1) Payment in six months, or, in case of default, a sale.
- (2) The three defendants to forthwith pay to the plaintiff the mortgage moneys, interest, and costs.
- (3) Milburn to deliver up possession.
- (4) Milburn and Rogers to pay Dickson his costs of suit.
- (5) Milburn to pay Rogers his costs of suit.
- (6) If Dickson should be compelled to pay the plaintiff, then Rogers and Milburn to repay Dickson with interest and costs.
- (7) If Rogers should be compelled to pay the plaintiff or Dickson, then Milburn to repay Rogers with interest and costs.

A motion was made by the defendant Milburn to set aside this judgment or for a new trial, but it was dismissed with costs by the Common Pleas Divisional Court.

On appeal to the Court of Appeal, the judgment of the Divisional Court was reversed with costs, and Milburn was relieved of all personal liability, upon the ground that he was, in fact, a mortgagee, and not a purchaser of the lands in question.

Mr. Justice Burton says (at p. 103): "If, as I think the evidence clearly establishes, he was mortgagee of Collins, it is very obvious that he could be under no obligation to indemnify his debtor against any prior encumbrances."

Mr. Justice Maclellan says (at p. 106): "It is clearly proved that Milburn is a mere mortgagee and not the owner of the equity of redemption, that person being Collins."

That a short form deed from A. to B. may be read as a mortgage from C. to B. is certainly a discovery.

The Chancellor, after perhaps a rather hasty examination of the specimen, declined to recognize it as belonging to the *genus* Mortgage at all. The Common Pleas Divisional Court placed it under their microscope, but came to the conclusion that it was at best a *lusus nature*, and they rejected it from their collection.

In the Court of Appeal, however, a more minute examination of its structure revealed the fact that in certain important features, especially in the head and tail, the specimen was identical with several well-known species of Mortgage. But the structure of *the body*, while indicating a slight correspondence with Welsh