

Now, it was precisely in accordance with these principles that the Chancellor appears to have proceeded in the case under consideration, and it cannot fairly be said that, treating Milburn as a purchaser, the rights of all parties were not fully and finally adjusted in the one action.

But the way in which the Court of Appeal would have the rights of the parties adjusted seems to be the following :

*Action No. 1.* Walker should have sued Dickson, the mortgagor, and Collins, the owner of the equity of redemption. Dickson could then serve Rogers with a third-party notice, so as to bind him by the result of the action, *but could not obtain any relief against him*

*Action No. 2.* Dickson should have sued Rogers for indemnity, and the latter could draw Collins into the controversy on a third-party notice.

*Action No. 3.* Rogers should have similarly brought an action for indemnity against Collins.

We have already seen that Dickson and Rogers, respectively, acquired their rights of indemnification at the moment of default being made in the payment of the mortgage. We may, therefore, imagine the above three actions commencing simultaneously, and judgment being given in each of them on the same (subsequent) day.

And what is the nature of the judgment to which the parties would have been entitled ?

In Action No. 2, the defendant Rogers would be ordered to pay, *not the plaintiff, but the mortgage debt*, or, in other words, to pay Walker, the mortgagee, and thus relieve Dickson, the plaintiff, from his liability as surety.

Similarly, in Action No. 3, Collins would be ordered to pay, not Rogers, but Walker, the mortgagee.

So that by these three actions, with triple sets of costs, the identical result would be reached as, under the Chancellor's judgment, was reached in a single action.

Surely this is a sad commentary on the rule for avoiding multiplicity of legal proceedings, above quoted.

It would be interesting to know how far, if at all, the Chief Justice and Osler, J.A., agreed with the *dicta* of Burton and MacLennan, J.J.A., on the point of practice above considered.

The real matter in dispute was the question whether Milburn was a purchaser or a mortgagee.