

in the meantime assigned, notice was given to the plaintiff by the assignee asking him to realize on his security so that a dividend could be computed on the unpaid portion of his claim. This led to the assertion of a claim by Frederick Sweeney, the other defendant, a son of Jacob Sweeney, that the property belonged to him and not to his father, and it is in evidence that the property had been conveyed by the son to the father in 1896 in trust—the deed not to be recorded unless nor until directions to record it should be given by the son. No explanation was given of the reasons for this transaction, and the plaintiff asserts that he had no notice of any trust under which the property was held when he endorsed the note for Jacob Sweeney, nor until more than a year afterwards. Frederick Sweeney alleges a conversation with the plaintiff before the making of the endorsement, in the course of which he notified him that the property was held in trust by his father. He fixes definitely the date of this alleged conversation, and the place, which was Yarmouth, but the plaintiff has proved to my satisfaction that he was not in Yarmouth at this date, but for some time before and after the alleged date of the conversation was in the United States. Plaintiff distinctly denies that any such conversation took place at any time, and I do not think it at all likely that the plaintiff would have accepted the property as security for the accommodation, with notice that it was the property of the son, and not of the father, who held the deed and made the conveyance. I conclude that the plaintiff had no notice of any trust. It is contended, however, that he took nothing by virtue of the conveyance, because at the time it was made Jacob Sweeney was not in possession, the property being in the possession of Frederick Sweeney or his tenant. I do not think that this contention can prevail. The defendant Frederick Sweeney for some purpose of his own, unexplained, and which on its face suggests a fraudulent design of some kind, enabled the other defendant to deal with the property as his own, and on the strength of that title the latter has conveyed to the plaintiff for value. I cannot think that the party so dealing with the property can be heard to say that his grantee had no power to so convey it. The objection that Jacob Sweeney was out of possession at the time he conveyed to the plaintiff is of a technical nature, and as I read the opinion of Graham, E.J., in *Brown v. Dooley*, 36 N. S. R., at p. 72, the equitable title to the property passes to the grantee from a grantor out