

multiplicity of legal proceedings than the construction adopted by the Chancellor and by the Common Pleas Divisional Court.

The plaintiff was assignee of a mortgage made by the defendant Dickson. The lands were subsequently sold by Dickson to Rogers, part of the consideration being that Rogers should assume and pay off the mortgage. Rogers agreed with Collins to sell the lands to the latter, subject to the mortgage. Collins, being indebted to Milburn, requested Rogers to convey the lands to Milburn, it being intended that Milburn should hold the lands as security for his debt. Accordingly, a short form conveyance was executed by Rogers, purporting to convey the land to Milburn, subject to the mortgage, and thereupon Collins went into possession. Default having been made in payment of the mortgage, the plaintiff brought an action of foreclosure or sale against Dickson, Rogers, and Milburn, claiming payment, possession, etc.

Collins was thus a stranger to the title, and it was not pretended that the plaintiff knew anything about the transaction between Rogers, Collins, and Milburn.

The chain of title as registered was set out in the statement of claim, and Milburn was alleged to be the owner of the equity of redemption in possession.

Dickson, in his statement of defence, admitted the mortgage, but claimed indemnity against Rogers and payment by him of the mortgage. Rogers similarly admitted his liability to Dickson, and claimed indemnity against Milburn and payment of the mortgage.

The position taken by Milburn was peculiar, and, in the light of subsequent events, ought to be clearly borne in mind. *He made no defence to the plaintiff's claim*, but pleaded, as against Rogers, that the conveyance was, in fact, made to him by way of security for the debt due to him from Collins.

Upon the application of Rogers, an order was made directing that the issue between Rogers and Milburn should be disposed of at the trial of the action, and this order was affirmed by the Queen's Bench Divisional Court.

The case was tried before the Chancellor, whose judgment does not appear in the report, but the following extract shows the view he took of the transaction:

"I do not think this evidence relieves Milburn from the position he is in as subsequent purchaser. The conveyance is in