

ORDE, J., in a written judgment, said that the plaintiff claimed to hold a mortgage made in 1912 by J. K. Leslie, now deceased, upon his interest in certain lands belonging to the estate of Blanche E. Leslie. Subsequently a writ of execution was issued by a judgment creditor of J. K. Leslie, and the defendant Gegg was, by an order of a County Court Judge, appointed receiver by way of equitable execution of the interest of J. K. Leslie in the estate of Blanche E. Leslie. By a subsequent order, Gegg was empowered to sell the interest of J. K. Leslie; and, in pursuance thereof, he sold the same to the defendant Hobberlin for \$753.81. There were several large incumbrances against Leslie's interest; and, although the deed from Gegg to Hobberlin did not expressly make the assignment subject to the incumbrances, that must have been understood.

If the plaintiff's mortgage was registered before the delivery of the writ of execution to the sheriff, the plaintiff is protected thereby. If it was not so registered, the plaintiff's right to enforce his security may depend upon notice. It did not appear when the mortgage was registered. The statement of claim did not set out very clearly what the plaintiff considered his rights to be as against the defendants. It might be that failure to register the plaintiff's mortgage would not avail to enable the execution creditor to dispose of more than the execution debtor's interest, but lack of notice of the existence of the plaintiff's mortgage might enlarge the purchaser's rights. By the statement of claim the plaintiff asked that the order of the County Court Judge authorising the receiver to sell should be set aside. There might be no power in the Court to do this, and it was difficult to see what status the plaintiff had in that regard. But it was alleged by the statement of claim that the existence of the plaintiff's security was known to the defendants, and (para. 7) that the sale by Gegg to Hobberlin was improvident, collusive, and fraudulent, and part of the prayer for relief was that the sale be set aside.

It might be that the plaintiff had no cause of action; but the learned Judge was unable to say, either from the statement of claim or from the plaintiff's examination for discovery, that, when all the facts were disclosed, the plaintiff might not be entitled to some relief, even upon the statement of claim as at present framed. In these circumstances, while the action might be embarrassing and vexatious to the defendants, and might in the result prove to be frivolous, it ought not to be disposed of at the present stage. The plaintiff must proceed at his own risk as to costs, but he ought, if he sees fit, to be allowed to go down to trial.

The motion should be dismissed, with costs in the cause to the plaintiff.