

MORTGAGES ON UNPLANTED CROPS.

assigned shall be used up and consumed, and other dye wares, &c., shall, in the ordinary course of carrying on the said business be purchased, grown or otherwise substituted for them, or any of them, the dye wares, &c., so purchased, grown or otherwise substituted, shall belong to the defendant," and though the judgment of the court proceeded upon the point that there was a subsequent Act abundantly sufficient to satisfy Lord Bacon's rule, still the following language of Crompton J.: "Indeed I myself would go further and should hold that the after-acquired goods were made subject to the trusts, and that it would not have been competent to Routledge to say that the trusts should not be executed," seemed to indicate that, without a *novus actus*, he would have held the after-acquired property to be the defendant's as against the assignees in bankruptcy.

In *Lutscher v. The Comptoir D'escompte De Paris*, L. R. 1 Q. B. D., 709, "The plaintiff was in the habit of receiving goods consigned to him by L. for sale upon commission, and in order to place L. in funds for the purchase of the goods, agreed to allow L. to draw upon him. The documents of title to the goods were hypothecated to the plaintiff to enable him to provide funds to meet the bills so drawn by L. The plaintiff accordingly, and at the request of L., arranged for the sale of a parcel of goods, to be shipped by a vessel chartered by the buyers, and L., having drawn upon the plaintiff for that purpose, purchased and shipped the goods. The bill of lading was handed to L., but never forwarded to the plaintiff, and L.'s affairs being put in liquidation, the liquidator placed the bill of lading in the hands of the defendants with instructions not to part with it until they were paid the value of the goods, and they accordingly refused to give it up to the plaintiff." It was held that the plaintiff had an equitable right to the bill of lading, and was entitled to sue the defendants for the wrongful detention of it. "I should be sorry," said Cockburn C. J., in his judgment

in this case, "if I were obliged to decide in favour of the defendants. The facts appear to be that, before the cargo of palm leaves was shipped, there was a specific engagement between the plaintiff and Levy, the consignor, that the goods should be bought with money advanced by the plaintiff, and that the bill of lading should be forwarded to the plaintiff as a security for his advance; and as far as we can see, if Levy had not become bankrupt, the bill of lading would have been forwarded to the plaintiff in due course. Under these circumstances I cannot entertain a shadow of doubt that a Court of Equity would decree specific performance of Levy's agreement. * * * Inasmuch therefore as it is no longer any objection in this court, that the plaintiffs rights are equitable only, I think it is quite clear that he is entitled to judgment."

In *Reeve v. Whitmore*, 9 Jur. N. S. 243, the facts were, that in 1859, S., in consideration of an advance, executed a bill of sale, in which H. joined for the purpose of postponing his security (H. was a prior mortgagee,) by which S. assigned to G. all and singular the prepared clay and earth and stock of bricks in and upon the brick field. Lord Westbury on appeal (p. 1214) said: "I think this case has been rightly decided by the Vice-Chancellor, when he declared that the instrument of May, 1859, did not operate or take effect as an equitable assignment of any clay, bricks, and so forth, which were not then on the brick field. I think it did not, because I think there was no present existing contract that, immediately on the execution of the security, the mortgagee should have such right, title and interest with respect to such future property. If there had been such a contract, it would have been an assignment and would have fallen within the principles explained by the House of Lords, in the case of *Holroyd v. Marshall*. I think there can be no doubt on the authorities, that a mortgagee can effectually charge after-acquired property; and although at law