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EFFECT OF DISCHARGE OF A FIRST MORTGAGE.

The decision of Middleton, J., *Re Butterfield & Waugh*, 19 O.W.N. 42, is deserving of the attention of conveyancers. The application was under the Vendors and Purchasers Act and the facts were as follows:—The vendor bought the land on November 1, 1911, and gave a mortgage payable on January 1, 1912, for \$200, part of the purchase money. This mortgage was paid off on January 1, 1912, and the mortgagee's receipt was produced. No discharge was registered and the mortgage could not now be found. This was the objection to the title made by the purchaser. It appeared that there had been a prior mortgage and this first mortgage was paid off and discharged in July 1920. The learned Judge held that the effect of this discharge under sec. 67 of the Registry Act (R.S.O., ch. 124) was to convey the legal estate to the mortgagor who was the person entitled in equity, and therefore that the objection was fully answered. The section in question declares that a discharge when registered "shall be as valid and effectual in law as a release of the mortgage or of such lands and a conveyance to the mortgagor, his heirs or assigns of the original estate of the mortgagor."

It does not appear explicitly by the case whether or not the vendor was the original mortgagor. The facts stated would rather lead to the conclusion that he was not, and had bought the land in question subject to the prior mortgage. We are rather inclined to think that whenever a mortgage is paid off the true effect of section 67 is that the legal estate does not revert in the mortgagor wherever he has made a subsequent mortgage, but will vest in the mortgagee next in priority. The words of the section are "the mortgagor his heirs or assigns" and his subsequent mortgagees would be in the position of "his assigns." To compel a purchaser to accept a title with a registered mortgage undischarged, merely