

was the plaintiff; but he claimed that he did not know any person but Reid had any ownership in the plough.

The facts showed, however, in the opinion of the Judge who tried the case, that the defendant was not a *bona fide* purchaser in the ordinary course of business, but that the circumstances put him upon inquiry as to the ownership of the plough.

*Held*, that the plaintiff was entitled to recover both the plough and the drill.

The plaintiff had recovered judgment against Reid for the amount of a certain note, which included the price of the plough, but the judgment was wholly unsatisfied.

*Held*, that this was no bar to the plaintiff's claim to recover the plough from the defendant. *Wesbrook v. Willoughby* .... 690

#### SALE OF LAND.

*Conveyance subject to mortgage—Implied undertaking to indemnify grantor—Security for debt—Estoppel—Recital as estoppel.*—The plaintiff filed his bill to compel the defendants to indemnify him in respect to a mortgage made by him upon certain land which he had conveyed to them subject to the mortgage, under the following circumstances:—

Plaintiff, being indebted to the defendants in the sum of about \$16,000, executed a bill of sale to them of a large amount of personal property. This bill of sale contained a recital that the plain-

tiff had contracted and agreed with the defendants for the absolute sale to them of the same and of the equity of redemption in the land in question granted by him to them by deed of even date, in consideration of the release by the defendants from his indebtedness to them; and on the same day the plaintiff executed a conveyance of his equity of redemption in the lands mentioned to two of the defendants for the expressed consideration of \$1,000.

The Chief Justice, who heard the cause, found upon the evidence that there was no verbal agreement to indemnify the plaintiff against the mortgage referred to, and that the defendants had not purchased the lands in the ordinary sense of that word, but had merely taken the conveyance of the equity of redemption as security, intending to make good to plaintiff any surplus which they might realize out of the property transferred to them, and at the same time to release the plaintiff from all his liabilities to them.

*Held*, that under such circumstances, there being no expressed stipulation on the subject, the right to indemnity arises from the sale of the incumbered land and not from the mere conveyance; and that such right does not arise where a conveyance is taken merely as security for a debt, and the grantee does not go into possession and receipt of the profits of the land; and it is only as between a real vendor and a real purchaser, in the ordinary sense of the words, that such right of indemnity arises.