

1856.

Joseph
v.
Heaton.

deal with the estate as absolute owner. In the words of Sir Richard Kindersley "they had in effect by this act assured the mortgagee that as far as they, the vendors, were concerned the mortgagor had an absolute indefeasible title both at law and in equity."

In the other case cited by Mr. Crooks, *Stocks v. Dobson* (a), a judgment creditor assigned his judgment; the assignee omitted to give notice to the judgment debtor, and he in ignorance of the assignment satisfied the debt to the judgment creditor. The assignee by his negligence enabled the judgment creditor to represent himself as entitled to receive the amount of the judgment debtor, and so to commit the fraud of receiving a debt which he had assigned to another. In this case there was a debt paid; in the other case cited, advances were made, in ignorance of rights of which the possessors of those rights ought to have given notice. I think that both these cases are distinguishable from the case before us upon the same grounds as the case of *Dearle v. Hall*, and the other cases of that class to which I have adverted.

As to the father's land, we think that *Heaton* did not do wrong in reassigning it—*quoad*, that land, *Morgan*, the father, was a surety for the son's debt—the land was pledged to secure a judgment debt prior to the plaintiffs'. If the land had been sold to pay the debt the surety would have been entitled to stand in the place of the creditor, whose debt was thereby satisfied, *pro tanto*, and to avail himself of the securities then held by the creditor against the principal debtor, and so would have been entitled to the benefit *pro tanto* of *Heaton's* prior judgment against *Morgan*, junior, a judgment prior to the plaintiffs'; or again, if the surety had paid *Heaton* a sum of money by way of redeeming the land pledged not exceeding its value, he would, it seems, be entitled to stand in the same position. The

(a) 5 De G. & S. 760.