

who was no party to the suits at law, and only went to protect particular property from the executions.

in the event of that property proving deficient, no redress could be had to recover the deficiency if Howard was ever able to meet it. To say the mortgage merged the claim at law would, in effect, be determining the mortgage itself a nullity; for, when it was given no claim existed; the object of the deed was to secure the payment to Mullikin of whatever sum he might pay, not that he had paid; it was entirely prospective. But although the legal right remained in Mullikin to obtain a judgment for the money paid by him, it will not follow, that he could not part with his right to receive the money when the judgment was obtained.

All that Mullikin could do was to transfer the property, mortgaged to him by Howard, subject as between him, his assignee and Howard, to the proviso of Howard's deed. But, as between Mullikin and his assignees Wilkins & Co., subject to the proviso contained in his, Mullikin's, deed to them. Of course, all the interest Wilkins & Co. obtained to secure their debt was the extent of Mullikin's claim on Howard; if that were less than was due to Wilkins & Co., they would have to resort to other funds; if none, must have borne the loss. If their claim, as appears to be the case, were less than the debt due from Howard, and the mortgaged premises were adequate, then the balance would have belonged to, and was subject to Mullikin's disposal. But, as he had transferred to Wilkins & Co. the claim he had on Howard, to the extent of the claim on him, it was not in his power, equitably, to transfer the whole claim to another person.

Wilkins & Co. appear to have absolutely conveyed to the complainant all their interest; and yet his own property, in the possession of Howard, has been taken in execution to be sold to raise money to be paid to William Gwynn. If Howard himself was able and willing to pay to Mullikin or Gwynn the whole amount of the judgment, on an application to this court, he would be prevented, and only permitted to pay the balance after discharging the debt that was due to Wilkins & Co., or he would be directed to bring it into this court, when a similar distribution would be made.

In respect to the bond. This cause cannot be distinguished from that of *Stewart v. Yates*, (*ante* 615,) determined by my predecessor, founded on a prior decision. There an injunction issued to prevent property from being sold under a *feri facias* issued on a judgment obtained against a third person who held the legal estate in the property intended to be sold, the equitable title being in the complainant. Here an attempt is made against the consent of him who has a right to the whole money to be raised, supposing it not to extend to the debt that was due to Wilkins & Co., to sell his own property. If the complainant has not the legal control of the judgment, he has an equitable, to the extent mentioned, supposing the transfers to him, that are exhibited with the bill to be *bona fide*; and, *prima facie* they are so considered; and therefore the injunction prayed for ought to issue; and the register is directed to issue it as prayed.

After which the defendant Mullikin filed his answer, and moved to dissolve the injunction. Upon consideration of which, on the first of January, 1825, the injunction was continued. After which the defendant Gwynn put in his answer, and thereon moved to dissolve; but upon consideration thereof, the injunction was, on the 30th of March, 1825, continued. After which the other defendants having answered, the motion to dissolve was again renewed; but on this third consideration, upon the answers of all the defendants, the injunction was, on the 2d of November, 1825, again continued. After which a commission was issued, and testimony taken. And at the final hearing on the 24th of July, 1825, the injunction was dissolved, and the bill dismissed with costs.