

and in paying the first mortgage for his own security he acquired the rights of the first mortgagee. *Page v. Foster*, 7 N. H. 392; *Weld v. Sabin*, 20 N. H. 533. Having paid his own mortgage to Williams on land which he had sold subject to it, and which the purchaser had agreed to pay as a part of the consideration, that mortgage became the principal security for the payment of the debt; and Bullard, to compel the appropriation of that security to the purpose intended, was entitled to be subrogated to it, and to be repaid out of the land what he had paid on the mortgage debt. *Stillman v. Stillman*, 21 N. J. Eq. 126; 1 Jones Mort. 879. His right to be subrogated to the position of the prior mortgagee was not defeated by his having taken a second mortgage as security for the payment of the first. *Patterson v. Birdsall*, 64 N. Y. 294.

The payment of his own debt by Bullard would, ordinarily, have been a discharge of his mortgage. In paying it he made use of a mortgage to himself on the same land; and if Morrill's note to him, secured by mortgage, did not pay his note to Williams, secured by his own mortgage on an undivided half of the same land, as was agreed by the parties, his own mortgage, though paid, would in equity be upheld as security for the payment of the other. The mortgage of Morrill to Bullard, jointly with Hovey, was a fund provided for the payment of his notes to Williams, and, in good faith, Bullard used it for that purpose. Neither justice nor the intention of the parties would prevail if the fund were not now applied to the extent it will go towards its original direction. Bullard and Hovey understanding that a single mortgage to them of the whole property was the same in effect as a mortgage of an undivided half to each, and Williams having notice of the interest of each one in the mortgage made by Morrill, the requirements of justice were met, and the intention of the parties carried out by subrogating Bullard to the rights of the mortgagee in the mortgage paid by him to secure the payment of Morrill's note to him. The plaintiffs are entitled to priority in the payment of their note from the proceeds of the mortgaged property to the extent of one half.

*Decree accordingly.*

DOE, C. J., did not sit: the others concurred.

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MILAN STEAM MILLS v. HICKEY.

Equity will enjoin the wrongful liberating of logs confined by a boom in the river, where the wrong-doer is insolvent, and threatens or intends to repeat the wrongful acts.

BILL IN EQUITY, alleging that the plaintiffs, owning a saw-mill on the Ammonoosuc river, had a large quantity of logs held by a boom in the river above the mill. The defendant, having logs further up the river, run them down, and they became mingled with the plaintiffs' logs. The plaintiffs, being agents of a corporation chartered to improve the river, had the right to detain the defendant's logs until he paid the toll on them. Without right or license, the defendant opened the plaintiffs' boom, and, along with his own logs, took a large number of the plaintiffs' logs, and suffered them to go down the river, and they were lost. The defendant is insolvent. The plaintiffs fear, from the threats of the defendant, a repetition of the acts, and seek an injunction and general relief. Demurrer.

*Ray, Drew & Jordan*, for the plaintiffs.

*Ladd & Fletcher*, for the defendant.

ALLEN, J. If the plaintiffs lost their logs through the wrongful acts of the defendant, they are entitled to an adequate remedy. The defendant being insolvent, a suit at law would not afford relief, but would leave them to suffer irreparable injury, and the threatening purpose of the defendant would expose them to a constant recurrence of the mischief. To prevent irreparable injury, and give the plaintiffs an adequate remedy, equity will afford relief by enjoining the wrongful acts—*Winnipisaukee Lake Co. v. Worsster*, 29 N. H. 443, 449, and cases cited; *Webber v. Gage*, 39 N. H. 182—and, as incident to the relief by injunction, will consider and adjust the question of damages. *Bassett v. Salisbury Manf. Co.*, 43 N. H. 249.

*Demurrer overruled.*

DOE, C. J., did not sit: the others concurred.

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SUMNER v. BLAKSLEE & a.

Pictures, pianos, and billiard-tables may be household furniture within the meaning of a mortgage of all the furniture in and belonging to a certain house.

Whether they are used under such circumstances and with such a purpose as to be household furniture in such a case, is a question of fact.

REPLEVIN, for three pictures, a piano, and a billiard-table. In a mortgage made to the plaintiff, October 20, 1872, the chattels in