

Case No. 6,488.

[2 Wkly. Notes Cas. 356.]

HILL V. BONAFFON ET AL.

Circuit Court, E. D. Pennsylvania.

Oct. 2, 1876.

EQUITY PLEADING—MULTIFARIOUSNESS.

On demurrer, multifariousness of bill can only be taken advantage of by the party suffering therefrom.

Sur demurrer to bill. The bill set forth the following facts: In 1870, Hill mortgaged certain real estate to Bishop and Bonaffon, his joint creditors, as security for their debt. In 1874, Hill mortgaged a portion of the same property, by a deed on its face absolute, to Bishop, as security for another debt due by him to Hill alone. Bishop then took and still held possession. Both debts had been paid. Hill having subsequently been adjudicated a bankrupt, his assignee filed this bill against Bishop and Bonaffon, praying for satisfaction of the first mortgage, for an account, for a reconveyance by Bishop, and for a decree that the tenants of the property should attorn. To this bill, Bishop demurred on the ground of multifariousness.

G. T. Bispham, for demurrer: Bonaffon, the joint mortgagee of the first mortgage, has nothing to do with the dispute between the parties to the alleged second mortgage. *Tasker v. Small*, 3 Mylne & C. 63.

Cadwalader, District Judge: Has not complainant the right to have removed from his title the possible cloud resting upon it from

Bonaffion's connection with the first mortgage?

N. Sharpless, contra.

THE COURT (CADWALADER, District Judge) overruled the demurrer on the ground that multifariousness could only be taken advantage of on demurrer by the person suffering,—in this case, Bonaffon, not Bishop.