

NOTICE—*Continued.*

- his creditor has assigned it, but to entitle the complainant to relief, he must prove that the assignment was made and that the defendant had notice of it. *Rider vs. Riley*, 16.
2. A *bona fide* assignee without notice will not be affected with notice to his assignor, but will be as much protected as if no notice had ever existed. *Ohio Life Ins. & Trust Co. vs. Winn & Ross*, 26.
 3. A subsequent purchaser who has actual notice, at the time of his purchase of a prior unregistered mortgage, cannot avail himself of his purchase against the prior conveyance. This doctrine rests upon the ground of fraud, and is subject to the qualification, that the prior unrecorded conveyance shall be available only in cases where the notice is so clearly proved as to make it fraudulent in a subsequent purchaser to take and record a conveyance in prejudice to the *known* title of the other. *Ib. and Gill vs. McAttee*, 256.
 4. A party dealing with an executor, as such, has notice of the existence of the will, and of its contents; the will, in this state, being open to inspection upon the public records. *Williamson vs. Morton*, 94.

See RECORDING OF MORTGAGES, 6, 7.

NUISANCES.

1. In cases of private nuisances, the court would, after hearing the parties, be authorized not only to interpose preventively, but may order them to be abated. *Lamborn vs. The Covington Co.*, 409.

OBLIGOR AND OBLIGEE.

See ASSIGNMENT, &c., 8.

ONUS PROBANDI.

See UNDUE PREFERENCE, 3.

PAROL AGREEMENT.

See MISTAKE, 1. STATUTES OF FRAUDS, 3. SPECIFIC PERFORMANCE. PART PERFORMANCE.

PAROL PROOF

See MISTAKE, 1, 2, 3. EVIDENCE, 7, 15, 16, 19, 26, 29, 30.

PARTIES TO SUITS.

1. The trustee of an insolvent debtor is a necessary party to a bill filed by creditors to vacate a fraudulent conveyance, made by the insolvent before his application. *Swan vs. Dent & Richards*, 111.
2. Occupying tenants and lessees, claiming title under the party against whom the decree passes, must be made parties to the suit, if it is intended to conclude their rights thereby. *Oliver vs. Caton*, 297.
3. The general rule is, that all incumbrances shall be made parties in a suit, to foreclose a mortgage, whether prior or subsequent, and though cases may be found where it has been held, that a prior mortgagee need not be made a party, because his rights are paramount, it would not be safe, in the face of opposing authorities of the highest respectability, to say, that such is the established law of this court. *Wyllies vs. McMakin*, 413.
4. The Court of Appeals in this state, have, in no case, decided, that either a subsequent or prior mortgagee, *whose debt is due*, need not be made a