

RECENT DECISIONS.

the auctioneer was estopped from denying the title of the trustee. "I am of opinion," said Lush, L.J., "that when a person in such a position, knowing of two adverse claims to goods, elects to take the part of one of the claimants and sell the goods as his, he is estopped from afterwards denying that claimant's title. * * * * In the present case the auctioneer deliberately elected to sell the goods for the trustee, with full knowledge of what the title of the adverse claimant was." "As a general rule," said Jessel, M.R., "a bailee of goods cannot dispute the title of his bailor. There are, no doubt, cases in which goods have been taken from a bailee by a third party, who claimed them by title paramount, and, if there has been no fault on the part of the bailee, it has been held that this is a good excuse to him against his bailor. An illustration of this in the old case of *Shelbury v. Scotsford*, Yelv. 22. * * * * But in order that the bailee may be able to avail himself of such a defence, he must himself have been in no default. * * * He (the auctioneer) has by his own act precluded himself from setting up the adverse claim of the bill of sale holder."

BILL OF SALE—CONSIDERATION.

In *ex parte Rolph*, p. 98, the Court of Appeal held that a bill of sale of chattels was void as against the trustee in liquidation of the assignor, inasmuch as the consideration was not truly stated in the deed, as required by Imp. 41-42 Vict., c. 31, s. 8 (cf. R. S. O. c. 119, ss. 2, 5); since (i.) part of the consideration named was not paid to the assignor but only agreed to be paid on his behalf; as to which Jessel, M.R., said, p. 102—"The consideration was so much money then paid by the lender to the borrower, and a covenant or agreement by him to pay a further sum at a future day to some one else, and that ought to have been stated in the deed;" (ii.) even if this part of the consideration named were taken to have been paid to the assignor, it was not paid "at or before the execution" of the deed, as therein stated, but was in fact paid a week after the date of the deed.

WITNESS—REFUSAL TO ATTEND.

In *Whitworth's* case, p. 118, the Court of Appeal affirmed the proposition that the only possible ground on which a witness, summoned under the order of the Court to attend and be examined, can base a refusal to attend and answer proper questions, is that the Judge had no jurisdiction to order him to attend. "It may be disagreeable to him to be obliged to attend, but the performance of the duties entailed upon us as members of civilized communities is not always agreeable."

MORTMAIN ACT.

In re Robson, p. 156, involved a very peculiar question arising in connection with the Mortmain Act, 9 Geo. II., c. 36. By various instruments executed at the same time, (i.) a settlor, after declaring some prior trusts, gave his wife power of appointment by will over £20,000, and covenanted to pay over the money to the trustees of the settlement within twelve months; (ii.) the wife by will appointed the £20,000 to trustees on trust to pay certain legacies, and the residue as she should by deed appoint; (iii.) the wife by deed-poll appointed the residue to charitable uses. The settlor survived his wife and died without having paid the £20,000. At his death part of his estate consisted of impure personalty, viz: £350 secured by a legal mortgage, and £13,700 secured by an equitable mortgage; and part of his estate consisted of pure personalty, which however did not suffice for payment of the £20,000. The question was whether the impure personalty could be resorted to for payment of the charitable dispositions in the wife's will. The Court of Appeal held that it could. Jessel, M.R., says, p. 160—"Though the deed seems to have remained in the man's possession, he was liable to pay this money within twelve months. * * * It was no doubt a debt created without value, but still it was a debt, and, as the law now stands, a debt for all purposes. * * * Within the twelve months he might have called in the mortgage and have received the money, and, that being so, it seems to me that there is no