

The appeal was heard by the Chancellor on the above date.

Counsel urged the same arguments as before.

The CHANCELLOR: The cases shew that where a suit is instituted by a married woman against her husband in respect of property, it is a general rule that she must sue by her next friend. I do not understand it to be contended by the solicitor of the plaintiff that the subject of this suit is of such a nature as to take it out of the general rule; but his contention is that the solicitor for the husband, on the day before that on which the time for answering could expire, asked and obtained from the solicitor of the plaintiff ten days' further time to answer; and this he contends was a waiver of his right to require that the plaintiff should sue by her next friend.

He contends, and I think rightly, that an objection for the want of a next friend, whether taken by demurrer or otherwise, stands upon the same footing as the right to security for costs; and it is clear that in the latter case the plaintiff waives his right. That, at least, was my opinion in *Boulton v. Cameron*, 2 Chy. Ch. 41, where a defendant having obtained from the plaintiff's solicitor further time to answer demurred instead of answering, I directed the demurrer to be taken off the file. The language of *V. C. Kindersley in Atkins v. Cooke*, 3 Drewry 695, supports my opinion.

The learned Chancellor then quoted a passage from the judgment of *V. C. Kindersley* in that case and continued:

The consent in this case ran thus: "We consent to an order giving defendant ten days further time to answer." This consent was endorsed upon an affidavit which, as it afterwards appeared, contained a statement to the effect that it would be necessary to apply to have a next friend appointed to the plaintiff before answering. This was not brought under the notice of the plaintiff's solicitor, as it certainly ought to have been. He was informed by the gentlemen who asked for his consent that the defendant's solicitor had received instructions to defend only the previous day. Being told this, and the request being for time to an-

swer—not for time to take objections to the plaintiff's proceedings—he had a right to infer that it was only for the purpose of answering that time was asked. He states in his affidavit that if he had been aware that the affidavit contained the statement in question, he would not have given time to answer, but would have noted the bill *pro con.* as soon as the time for answering had expired.

I look upon what passed on the application to the plaintiff's solicitor for his consent for time to answer as a suppression of that which ought to have been disclosed, and I am clear that the defendant can derive no advantage from that suppression.

What the defendant's solicitor would have done if the consent had not been given is beside the question. The consent was obtained for time to answer, and time obtained for that purpose could not, in good faith, be used for any other purpose.

Appeal allowed with costs.

BECHER V. WEBB.

Admission of incumbrancer foreclosed by Master's report.

Where an incumbrancer had been foreclosed by the Master's report but the neglect to come in was partially explained, and the application was made promptly, he was admitted to prove, but only on his relinquishing priority over a puisne incumbrancer who had come in within time.

[Mr. Stephens, Jan. '9.]

In this matter two incumbrancers having been made parties in the Master's office, the puisne incumbrancer came in and proved his claim, but A., the prior incumbrancer, omitted to do so, and was foreclosed by the Master's report, filed Nov. 6, 1878.

Langton now moved for an order to allow A. to come in and prove his claim, and to have priority over the puisne incumbrancer. It appeared by the affidavit of A. that (1) the affidavit sent to him by his solicitors to make, in order to prove his claim, had been mislaid, and was not discovered till his time for proving had expired; (2) that some time then elapsed before he could identify the original defendant to be the man against whom he had recovered certain judgments;