

THE ORIGIN OF PARLIAMENTARY REPRESENTATION IN ENGLAND.

charge, accordingly, took priority of the charge in favour of the bank. "It is impossible," observed Lord Selborne, C., "to see the injustice sometimes done by this class of cases without finding cogent arguments for an improvement in the law as to the title to real estate, in order to get rid of the difficulties arising from there being a legal and equitable title, and of the necessity of deducing title by long and complicated abstracts." It was strongly urged that the result of deciding in favour of the prior charge, and for that purpose resuscitating a venerable instrument bearing date Anno Domini 1774, would be, moreover, that many equitable mortgages might be made of the same estate, and the holder of any one would ever be subject to be turned round by some unsuspected prior charge, unregistered, and it may be from its particular nature incapable of being registered: see *M'Kinney's Estate*, 6 Ir. L. T. R. 179, *passim*. Admitting the indubitable truth of this possible result, Lord Romilly observed that the sole answer to the objection is, that the person who lends money on this species of security must take care to be the first of such incumbancers; and, if he cannot be sure of this, he must not advance his money without the security of a legal mortgage: 21 L. T. N. S. 753. Certainly, in effect, it would appear to be eminently perilous to lend money upon equitable securities. But, as Turner, L.J., observed in *Cory v. Eyre*, 1 De G. J. & S. 169, "if equitable securities are to be made perfectly safe, it must be done by the Legislature. We cannot alter the law." The first question, of course, in such cases will be, did that take place which was sufficient to vest an equitable estate? "It is extremely difficult to determine the question of what it is, provided that it be a material deed, that will create an equitable mortgage," declares Lord Romilly; but, then, "'material' means only that it must be a deed relating to the property," and by no means necessarily a deed upon which the title depends. And the authorities have gone the length of holding that, when the Court is satisfied of the good faith of the party who, between himself and the owner, had a prior equitable charge in point of time—when there has been a positive statement, honestly believed, that he had got the necessary deeds—that he

is not bound to examine the deeds, not bound by notice of their actual contents being unexamined, or by any deficiencies which, by examination, he might have found in them, and that this is so even where the depositor was himself acting in the double capacity of borrower of the depositor's money and solicitor for the depositor, as in *Colyer v. Finch*, 5 H. L. C. 905, 924, 928, and *Hewitt v. Loosemore*, 9 Hare, 449. Many grave considerations are, accordingly, opened up by the decision of *Dixon v. Muckleton*. But that, in particular, which we here desire to note that it enforces is, the exigency of looking more strictly than is usual in practice into the remoter history of title, and of not ignoring the existence of muniments no matter how antiquated, and, in one sense, immaterial. And if, in the result, abstracts should come to resemble the "Encyclopædia Britannica" as it might appear in manuscript, and if the archives of the muniment-room should increase and multiply till, as Hamlet observed, pointing to the coffin of the lawyer, "the very conveyances of his lands will hardly lie in this box," the lawyers alone are not to blame, should that result remain unremedied. It lies with the public to expedite redress, and with the Legislature to provide it.—*Irish Law Times*.

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(By Edward A. Freeman, D.C.L.)

When the painter Hayden ended his troubled life, the picture on which he was engaged was "Alfred and the first British Jury." In that day perhaps few were struck by the grotesque incongruousness of the title. It probably struck but few that, if Alfred brought together any jury, it was at all events an English jury. It struck but few that to any Englishman from the days of Alfred till deep into the eighteenth century, a "British jury" would have conveyed no meaning but that of a jury of Welshmen. But this is not the main point. The more wonderful thing is that any body could ever believe that Alfred invented trial by jury, or indeed that, in the sense in which it was meant, any body ever