

sufficient to deprive him of the benefit which he had obtained by registration.

Upon the appeal,

*Joshua Williams, Q. C., and Burget.* for the applicant, cited *Le Neve v. Le Neve*, Ambl. 435; 2 White & Tud. L. C. 28; *Tunstall v. Trappes*, 3 Sim. 301; *Benham v. Keane*, 5 L. T. Rep. N. S. 439, 3 De G., F. & J. 318; *Bushell v. Bushell*, 1 Sch. & Lef. 99; *Cheval v. Nichols*, 1 Strange, 664; *Sheldon v. Cox*, 2 Eden. 221; *Davis v. Earl of Strathmore*, 16 Ves. 419; *Nixon v. Hamilton*, 2 Dr. & Walsh, 361; *Robinson v. Woodward*, 4 De G. & Sm. 562; 12 L. T. Rep. N. S. 535; *Wormald v. Maitland*, 13 W. R. 832; *Espin v. Pemberton*, 32 L. T. Rep. 250, 345; 3 De G. & J. 547; *Lee v. Green*, 26 L. T. Rep. 302; 6 De G., M. & G. 155.

*Southgate, Q. C., and Everitt*, for the respondent cited—*Jolland v. Stoubridge*, 3 Ves. 478; *Wyllie v. Pollen*, 9 L. T. Rep. N. S. 71; 3 De G. J. & S. 595; *Hine v. Dodd*, 2 Ark. 275; *Sharpe v. Foy*, 19 L. T. Rep. N. S. 541; L. Rep. 4 Ch. App. 35; *Chadwick v. Turner*, 14 L. T. Rep. N. S. 86; L. Rep. 1 Ch. App. 310; *Kennedy v. Green*, 3 My. & K. 639; *Atterbury v. Willis*, 27 L. T. Rep. 301, 8 De G., M. & G. 454; *Wyatt v. Barwell*, 19 Ves. 435; *Hewitt v. Loosemore*, 9 Hare, 449; *Lord Forbes v. Deniston*, 4 Bro. P. C. 189, 19 L. T. Rep. N. S. 288; *Newton v. Newton*, L. Rep. 6 Eq. 135.

The LORD CHANCELLOR (Hatherley)—I cannot agree with the view taken by the Master of the Rolls in this case. The case is, in my opinion, settled by the authorities, and the only question which has to be decided is, had or had not Mr. Stagg (the second mortgagee) at the time he advanced his money, notice of a prior incumbrance? Looking at the facts, it is not easy to say he had not. Now, it was settled in the case of *Hine v. Dodd*, and has been held in every case of a similar kind since then, that it is not sufficient that the person having the second incumbrance in point of date, should at the time have a mere suspicion of an earlier incumbrance, but it must be proved that he had actual notice of it; but such actual notice when clearly proved renders it fraudulent to attempt to obtain priority, when you are not entitled to it, by attempting to take advantage of the Registry Acts; and where there is such actual fraud in the person registering the second incumbrance, the first incumbrance, though unregistered, will not be postponed. The question remains, what is actual notice? Notice to the solicitor about the transaction in question at or near the same time as employment of him by the client is clearly such. It is not incorrect to call such notice actual notice the client, for whatever notice your agent has, that notice must be imputed to you. There was in this case plain and distinct notice on the part of the solicitor at that time employed by Mr. Stagg, and this notice must be carried on to him. No moral guilt is imputed to Mr. Stagg. Robinson, the solicitor, was also the trustee of this very property for the purpose of mortgaging it. Hall, to whom the property belonged, seems to have concurred in these mortgages, and Robinson then, in pursuance of his trusts, proceeded to raise money, first from Miss Leigh on the 10th May, 1862; and on the 9th July he raises money from Mr. Stagg; Robinson being

then employed by Stagg as his solicitor. In that state of facts it could not be argued that the solicitor had not at that time notice of the first incumbrance: that point has been raised in some of the cases cited, but that question did not arise here, for it was money being raised on the same property and almost at the same time as Mr. Stagg's incumbrance. As to *Kennedy v. Green*, that was a case where the solicitor was himself the author of the fraud which affected the title, and the fraud was committed under circumstances apparent on the face of the deed, which would have excited the suspicions of a professional man, and have led to inquiry. In *Atterbury v. Willis*, Lord Justice Turner, referring to that case, meets it by saying, "The case of *Kennedy v. Green* was much relied on upon the part of the defendant in the argument upon this part of the case, but I thought in *Howitt v. Loosemore*, and I continue to think, that that case does not govern cases like the present. In that case there was fraud independently of the question whether the act which had been done was made known or not. In such cases as the present the question of fraud wholly depends upon whether the act which has been done was made known or not." In *Sharpe v. Foy*, the case was like *Kennedy v. Green*; there was an express intent to defraud. In connection with this, a point which I thought during the argument might create a difficulty, does not seem to do so, when the facts are examined, viz., whether or not Robinson, being guilty afterwards of gross fraud, you could fasten upon him at the date of these mortgages any fraudulent intent? But I cannot see that this is possible, for though he neglected his duty grievously, he was not then concerned in any fraud—at least so far as appears from the evidence. I cannot adopt the view of the Master of the Rolls as to the wife in the case of *Le Neve v. Le Neve* being a party to the fraud there practised, though the whole transaction was clearly fraudulent from beginning to end. Lord Hardwicke in that case said that a second purchaser with notice of a prior purchase getting his own purchase first registered, was guilty of fraud, the design of those Acts being only to give parties notice who might otherwise, without such registry, be in danger of being imposed on by a prior purchase or mortgage, which they are in no danger of when they have notice thereof. There is no difference in the Registry Acts as to the point of notice. I hold that what the solicitor knows, the client must be clearly taken to know, unless the case can be brought within the principle of *Kennedy v. Green*. It has been argued that because another solicitor was employed by Stagg after these transactions, who, in fact, registered his mortgage, that ought to put Stagg in a better position, but I am unable to see how that can be. Being of opinion, therefore, that the authorities on this subject have been all one way, and that actual notice of Miss Leigh's mortgage by Robinson (Stagg's solicitor) has been clearly proved, Stagg himself must be deemed to have had notice of it, and therefore cannot take advantage of his prior registration. The decree of the Master of the Rolls must, therefore, be reversed, and the chief clerk's certificate upheld, and Miss Leigh's mortgage declared a prior incumbrance to that of Mr. Stagg.