

CURIOSITIES OF ENGLISH LAW.

in tampering with the plain meaning of written agreements, but the policy of the Court, though doubtless well intentioned, was, we cannot help thinking, a mistaken one. The doctrine of relief against penalties, if it is to be justified at all, must be justified on very different grounds from those hitherto assigned, and restrained within very narrow limits. We are aware that, from time immemorial, it has been, and still is, the invariable practice to instance the interference of Equity on behalf of the oppressed mortgagor as an ever memorable example of the courage and dexterity with which the Chancellors frustrated the iniquities of the Law, and contrived to do complete justice between man and man. At first sight this view of the case, no doubt, seems plausible enough. It is certain that the legal position of a mortgagor is one of intolerable hardship, and it is equally certain that although the law of mortgages is by no means free from doubt and difficulty, an ordinary mortgage deed does, owing to the intervention of Equity, work substantial justice between borrower and lender. Equity, then, has provided an efficacious remedy against a particular form of injustice, and is, so far, *prima facie* entitled to our thanks; but before entering final judgment various considerations must be taken into account which, unless we are very much mistaken, will be found quite sufficient to make us pause, and feel uncomfortable doubts as to whether it was altogether politic to lay down the rule that the intention of the parties to an agreement is not always to be deduced from the plain meaning of the document they have subscribed, and to invest the Court with full power and authority to bind persons to the observance of a contract very different from the one which they had in fact executed. In estimating the services rendered by Equity to impecunious mortgagors it would seem to be taken for granted that, but for the intervention of Equity, they would constantly be obliged to submit to the grossest injustice under sanction of the Law. The form of mortgage deed at present in use has, with a few variations, served for so many generations the turn of thriftless landlords and thrifty capitalists, that, at last, it has become impossible for the legal mind to conceive the notion of land being made available for purposes of bor-

rowing, except through the instrumentality of a document drawn up in accordance with the precedents of Bythewood or Davidson. In making this assumption the profession have greatly underrated both the common sense of mankind and their own integrity. It appears to us very certain that if Equity had not interfered the result would have been, not the wholesale and continuous ejection of landlords from their ancestral tenements (which is the view of the case always presented to the law student), but the overthrow of the present absurd form of mortgage, and the substitution of another expressing, in clear and distinct terms, the real agreement between the parties. Equity, by the very process of healing over the surface, has perpetuated, instead of extirpating, the disease it professed to doctor, and, to our thinking, the last state of the patient is worse than the first.

If the only result of patching up the relations between mortgagor and mortgagee had been to perpetuate a form of mortgage purporting to bind persons to stipulations they never intend shall be carried into effect, that of itself would be no inconsiderable evil, for it is quite unworthy of a civilized people that one of the commonest forms of contract should be drawn up in such a way as to require the interposition of the Court of Equity to prevent the perpetration of a gross injustice. Such a clumsy method of doing justice between man and man might recommend itself in an archaic state of society, which delights in tricks and fictions, but is quite out of place in a nation that has deliberately done away with Messrs. John Doe and Richard Roe, Fairtitle and Goodright, and is laying to heart the important lesson that justice ought to be dealt out in a straightforward and intelligible manner. Unfortunately, the heroic remedy adopted for the relief of mortgagors has, as we have seen, led to other results more serious than the retention of an absurd form of mortgage deed. The refined instinct, by virtue of which the Equity Judges felt themselves competent to discover the real intention of the parties to a mortgage, without any other evidence than that afforded by a deed, in which a very different intention had been expressed, was soon brought to bear upon other contracts besides mortgages, to the great gain of the profession and the con-