

RECENT ENGLISH DECISIONS.

Vice Chancellor of the County Palatine, of Lancaster) that the mortgage of the plaintiffs had priority over that of Mrs. Whipp's. The conclusions drawn from the authorities, by Fry, L.J., who delivered the judgment of the Court, were thus stated by him:—“(1) That the Court will postpone the prior legal estate to a subsequent equitable estate: (a) When the owner of the legal estate has assisted in, or connived at the fraud which has led to the creation of a subsequent equitable estate, without notice of the prior legal estate, of which assistance or connivance—the omission to use ordinary care in inquiry after, or keeping, title deeds, may be, and in some cases has been held to be, sufficient evidence, where such conduct cannot otherwise be explained; (b) Where the owner of the legal estate has constituted the mortgagor his agent with authority to raise money, and the estate thus created has, by the fraud or misconduct of the agent, been represented as being the first estate. But (2) that the Court will not postpone the prior legal estate to the subsequent equitable estate, on the ground of any mere carelessness, or want of prudence on the part of the legal owner.”

One other point was also decided by the Court which is not noticed in the head note—out of the money paid by Mrs. Whipp to Crabtree, £1,900 found its way from Crabtree into the banking account of the plaintiff company and was applied in payment of a larger debt due by Crabtree to the company, the latter, however, having no notice of the source from whence it was derived. On behalf of Mrs. Whipp it was argued that she was entitled to priority to this extent, on the ground that she was entitled to follow this money obtained from her by fraud. But Fry, L.J., disposed of that point thus:—“The proposition that money obtained by fraud can be followed into the hands of persons who take it in satisfac-

tion of a *bona-fide* debt, without notice, is in our judgment devoid of support from principle or authority.”

FRAUD ON BANKRUPT LAW—CONTRACT PURPORTING TO LIMIT RIGHTS OF TRUSTEE IN BANKRUPTCY IN FAVOR OF BANKRUPT.

The case of *Ex parte Barter*, 26 Ch. D. 510, demands a passing notice, although owing to the repeal of the Canadian Insolvency Act it is not of that importance that it would formerly have been. In that case a contract for building a ship provided that if at any time the builder should cease working on the ship for fourteen days, or should allow the time for completion and delivery of the ship to expire for one month without the same having been completed and ready for delivery; or in the event of the bankruptcy or insolvency of the builder—it should be lawful then and thenceforth for the buyer to cause the ship to be completed by any person he might see fit to employ, or to contract with some other person for the completion of the work agreed to be done by the builder, and to employ such materials belonging to the builder as should be then on his premises, and which should either have been intended to be, or be considered, fit and applicable for the purpose. The builder became bankrupt and his materials were used to complete the ship, but it was held that the clause in the contract, so far as it applied to the bankruptcy of the builder, was void as against his trustee in bankruptcy, as being an attempt to control the user of the bankrupt's property after his bankruptcy, and as depriving the trustee of the right to elect whether to complete, or abandon, the contract, as might seem most beneficial for the creditors—and it was held that this clause having been put in force by the buyer on the filing of a liquidation petition by the builder, the user of the builder's materials could not be justified on the ground of a subsequent cesser of work on the ship.