

Eng. Rep.] RE B. L. A. Co. v. EX PARTE CALISHER—TICHBORNE v. TICHBORNE. [Eng. Rep.]

sufficient, and how does notice by a newspaper differ from notice by a stranger? Not only will notice by a stranger be insufficient, but in some cases the notice must be given in a particular way. For example, in the familiar case of an insurance company, notice of an incumbrance on a policy must be given in accordance with the usages of the office. To give priority the notice must be full and regular notice, given by the person interested, who intends to derive benefit from the notice. In this case, if the trustees had had proper notice, they would be liable to make good any loss to the mortgagee from their false information. But it is impossible that they could be made liable where the only notice they had of the incumbrance was by reading a newspaper. The law upon this point is clearly stated by Lord Eldon in *Evans v. Bicknell*, in the words quoted in the judgment in the case of *Burrows v. Lock*, 10 Ves. 475. The trustees in that case could not have been made liable if their only information had been derived through a newspaper. It is in my opinion impossible to discriminate between a mere casual conversation and a paragraph in a newspaper. The certificate must be varied by declaring that Shepherd is entitled to the first charge on the life estate.

RE BREECH-LOADING ARMOURY COMPANY (LIMITED). EX PARTE HENRY CALISHER

Company—Winding up—Practice—Witness—Attendance before Examiner.

A witness who is summoned to attend for examination before an examiner, under the 115th section of the Companies' Act, 1862, is entitled to be attended by counsel and solicitor.

[15 W. R. 1007. July 11.]

This was an application on behalf of the official liquidator, "that a witness (having submitted to be examined under the 115th section of the Companies' Act, 1862, before a special examiner), might be ordered to attend before such examiner to be examined by the counsel of the official liquidator without any counsel, solicitor, or other persons being present on behalf of the witness."

The witness was a Mr. Calisher, who had had dealings with the company, and from whom the official liquidator desired to get information as a preliminary to taking further proceedings. Mr. Calisher had attended before the examiner, and had been sworn, but when the counsel for the official liquidator required that all persons other than the certain witnesses, and those who appeared for the official liquidator, should withdraw, Mr. Brandon refused to do so, and the examination was adjourned that this application might be made. Mr. Brandon was also solicitor for other parties who had yet to be examined, and whose answers were, it was submitted, likely to be affected by the result of Mr. Calisher's examination.

There was some dispute as to whether Mr. Calisher had attended to be *cross-examined* on an affidavit which he had filed in opposition to an application to settle his name on the list of contributors, or whether he had really submitted to be *examined* under the 115th section, but his lordship directed the question to be argued on the assumption that he had attended only as a witness to be *examined*.

*Selwyn, Q. C., and Swanston*, for the application.—We only ask to have the same advantage which is attained in a public court by ordering all other witnesses to go out of court while one witness is examined. This is not a cross-examination, but an examination under the 115th section. When the assignees summon a witness in bankruptcy, the witness has no right to bring solicitor and counsel, though it is often allowed when there is no objection. This is an examination not of a *party*, but of a witness, the official's duty to extract *information*, as a preliminary to taking proceedings. The information which he will get from Mr. Calisher will not be evidence against him or anybody. If there were any issue joined and any adversary, counsel and solicitor might attend on behalf of such adversary but not on the witness's behalf.

*Jessel, Q. C., and Cottrill*, were not called on.

Lord ROMILLY, M. R.—This application cannot be granted. It is clear that what a witness said before an examiner might be used against him, if he said anything inconsistent with the evidence he might afterwards give. The witness must attend if summoned, though it is not clear what power there is to examine him under the 115th section, but he must have the assistance of his counsel and solicitor.

TICHBORNE v. TICHBORNE.

TICHBORNE v. MOSTYN.

CASE OF THE "PALL MALL GAZETTE" AND OTHER NEWSPAPERS.

Contempt of Court—Publication of evidence in a cause and commenting on it.

An article was published in a newspaper giving an account of certain affidavits which had been filed in a suit but which had not come before the Court. The writer went on to comment on the affidavits, and as to some of them used these expressions: "Many of these are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless."

*Held*, that the publisher of the newspaper had been guilty of a gross contempt of Court.

The Court will discountenance any attempt to prejudice mankind against the merits of a case before it has been heard, and will protect every suitor against that which can affect the minds of persons who might be willing to give evidence, and which may prevent persons from giving evidence.

The case before Lord Hardwicke, reported in 2 Atkyns, 409, and *Littler v. Thompson*, 2 Beav. 136, approved and followed.

[15 W. R. 1072. July 18.]

The first of these motions was one, made by special leave granted on the 15th July, that John Kellett Sharpe, the printer and publisher of the *Pall Mall Gazette*, might stand committed to prison for a contempt of Court in printing and publishing an article headed "*Tichborne v. Tichborne*," and that he might pay the costs of the motion. The article appeared in the paper on the 13th of July, and contained comments on the affidavits filed on behalf of the plaintiff, which the plaintiff considered to be injurious to his case.

The plaintiff had filed a bill to obtain possession of certain estates to which he laid claim. A great mass of title, which mainly depended on his being able to prove his identity with Roger Tichborne, formerly a cornet of carabineers, who had not been heard of for many years, and was supposed to be dead. His account was that he