

Eng. Rep.]

PEARCE V. MORRIS—GILLIATT V. GILLIATT.

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the other owners of the equity of redemption could be prejudiced: *Elisha v. Elisha*, Seton, on Decrees, 465, 475; *Tilley v. Davies*, 2 Y. & C. C. C. 399; *Smith v. Green*, 1 Collyer, 555.

Jessel, Q. C., in reply.

Lord HATHERLEY, L. C.—The question to be decided relates to the position of the mortgagor and mortgagee when several are interested in the equity of redemption, and the authorities have clearly settled the proper course to be pursued under these circumstances. Any person interested in the equity of redemption is entitled to redeem, and when he tenders the mortgage money and interest, to have a conveyance of the legal estate and the title deeds delivered up to him. The form of the conveyance must depend on the circumstances; but the case in Seton, p. 475, shows how that is dealt with.

In *Wicks v. Scrivens*, I had to decide the case of a tenant for life, and I decided then that he was entitled to redemption and to a conveyance. My opinion is, therefore, that it is not necessary for a mortgagee to wait for the institution of a chancery suit where there happen to be different claimants to the equity of redemption, and that it would be very mischievous to hold that the mortgagee is bound to enquire as to who are the real owners of the equity of redemption, he is only bound to ascertain that the person tendering payment has an interest in it. The mortgagee is only a trustee, and to this extent—he is not entitled to convey to a mere stranger to the estate; but as long as there is any interest in the person tendering, he has discharged his duty by giving a conveyance to such person, and handing him over his title deeds.

As to the form of the conveyance, it is desirable that the deed on the face of it show that others are interested in the equity of redemption and that should be stated on the decree.

As to the costs I confess I have felt much difficulty. The mortgagee being told that the plaintiff was owner of a portion of the estate by contract was put in this position:—If he refused the tender he might lose his subsequent interest, and if he conveyed the legal estate, he might be conveying to one who might turn out not to be the owner. The person contracting may have a right to make a tender; but whether he has a right to a conveyance and the deeds, until the conveyance to him by his vendor is perfected, is another matter. In my opinion this bill was prematurely filed.

James v. Biow was cited to show that a mortgagee was not bound to make a conveyance, unless he had a clear account of all those interested in the equity of redemption: but all that case decides is, that he must ascertain that the person tendering is not a mere stranger. I think in this case the defendant was entitled to reasonable proof that the plaintiff was not a mere stranger. I am satisfied by the affidavit that the plaintiff's title is now complete, but this was not the case when the bill was filed. The Court will not force a mortgagee to convey and hand over deeds until the title is perfected, although he accepts the tender.

The decree will be that the plaintiff now being tied to a portion of the estate, and having redeemed, he is entitled to have a conveyance

and delivery of the deeds. The simple rule is, that a person who makes out his title to some portion of the estate, and redeems the mortgage, has a right to the conveyance and the deeds. The defendant's case was, it is true, put much too high; still, considering that the plaintiff was not in a position to assert an immediate right, I cannot lay too much stress on that. There was no threat to part with the deeds or create an adverse title. In my opinion the decision as to costs was erroneous. The decree must be varied, and after the direction to convey the legal estate must be inserted "subject, as to those portions of the premises in which the equity of redemption is vested in persons other than the plaintiff, to such right and equity of redemption." The plaintiff must pay the costs. There will be no costs of the appeal.

GILLIATT V. GILLIATT.

Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48)—Employment of puffer—Reserved bidding.

Land was offered for sale by auction, subject to a reserved price, but a right to bid was not reserved.

Held, that the employment of a person to bid on the seller's behalf was illegal, and vitiated the sale.

[M. R. 18 W. R. 203.]

This was an adjourned summons. The facts were, that under the decree in this cause an estate in Sussex was offered for sale by auction by Messrs. Norton, Trist, Watney & Co., the eminent auctioneers, subject to conditions of sale, the second of which was: "The sale is subject to a reserved bidding, which has been fixed by the judge to whose court this cause is attached."

No right to bid was reserved on behalf of the owners.

The estate was knocked down to a purchaser for £29,000, which was the reserved price. The purchaser afterwards discovered that a puffer had been employed by the auctioneer, and accordingly took out the present summons to set aside the sale.

It was in evidence that one puffer had been employed who bid for himself, and made in all four biddings, but did not bid beyond £28,900.

The Sale of Land by Auction Act (1867), sec. 5, provides that the conditions of sale by auction of any land shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved. If it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

Jessel, Q. C., and *Whitehorne*, in support of the summons.

Sir R. Baggallay, Q. C., and *Langworthy*, for the owners, submitted that the employment of a puffer under the circumstances of the case was immaterial, inasmuch as he did not bid up to the reserved price.

Mortimer v. Bell, 14 W. R. 68, L. R. 1 Ch. 10, was referred to.

Lord ROMILLY, M. R.—The meaning of the Act is clear, that in every case of a sale of land by auction, the owner must state in the conditions of sale whether there is a reserved price, and if