

CONSTRUCTIVE NOTICE.

Brand, the question of martial law was fully discussed, and the views arrived at supported by unquestionable authority and irrefragable argument; but Mr. Justice Blackburn rested his opinion on his own mere *ipse dixit*, and assumed certain doctrines as if the whole matter were too clear for argument. Even if the admirable exposition of the Chief Justice had not been in existence, this would have been rather too much for those who, like ourselves, had always considered the law of England as something which could not be set aside on any emergency, or for any reasons of state, or in consideration of any end to be gained, however great that might be. But to proceed in laying down the law on this vital matter, as if all that the Chief Justice had said with so much force of argument and clearness of statement went for nothing, was still worse. In a question of smaller importance this might have called forth only a slight censure, but when the highest points of our law were touched, it must be emphatically condemned.

On the case of Mr. Eyre we do not desire to pronounce any judgment, although we cannot but remark that on the facts Mr. Justice Blackburn exhibited an undue bias in favour of the defendant. The question of the guilt or innocence of the ex-Governor of Jamaica is one thing, but the question of what is the law of England on a subject of primary importance is a very different matter. The charge of a judge as to facts, like the verdict of a jury, however erroneous it may be, does not affect the law applicable to the case. But when the senior puisne judge of the Court of Queen's Bench lays down the law to the grand jury of Middlesex, on a matter of vital moment, according to his own private interpretation, and claims for his peculiar views the sanction of the Court which he represents, the country owes a deep debt of gratitude to one who, like the Chief Justice, boldly comes forward to assert the true doctrines of the law of England, and to vindicate the high Court over which he so worthily presides. Among his many claims to the esteem and admiration of his countrymen, this will assuredly not be regarded as the least.—*Law Magazine*.

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We take it to be a principle of English law, that the purchaser of an estate is put upon inquiry into the existence of obligations on his part necessarily arising from the nature or situation of property irrespective of actual notice of those obligations. This principle was fully considered and elucidated by Lord Romilly, M.R., in the recent case of *Morland v. Cook*, 16 W. R. 777. The case also involves the consideration of the doctrine of *Spencer's case*, 5 Rep. 16, as to covenants running with the land; but our chief object at present is to address ourselves to the consideration of the foregoing principle.

The facts before the Court in *Morland v. Cook* stated as follows:—The owners in fee simple, under a deed of partition, of five adjoining estates in Romney Marsh, covenanted with each other upon the partition in 1792, that a sea-wall, which was for the common benefit of all should be maintained and kept in repair at the expense of the owners of the time being of the estates, that the expenses of repairing the sea-wall should be borne ratably, and that the expense of each owner should be a charge on his estate. The lands in question have been reclaimed, and lie several feet below the level of ordinary high-tides; they would, in fact, but for the protection the wall affords, be covered every day by the sea. People who live above the level of high-water mark, as a rule, concern themselves little with the rights and interests of those who live in levels and marshes under the protection of of sea-walls, and are little acquainted with the law of sewers so quaintly dealt with by Callis in his readings on sewers. That author tells us (p. 114) that there are nine ways whereby the duty of repairing a sea-wall arises—namely, by frontage, ownership, prescription, custom, tenure, covenant, *per usum rei*, assessment of township, and, finally, by the law of sewers. We return, however, to the case before us. The property—the liability of which under the covenant to maintain the sea-wall was the question in dispute—formed part of one of these estates, having been conveyed by the grantee under the deed of partition to a purchaser in 1829, and by him, in 1862, to the present defendant. This gentleman contended that he was a purchaser for value without notice of the liability under the covenant to repair, and therefore exempt from the obligation, because the contract under which he purchased contained a clause prohibiting him from inquiring into the title previous to the conveyance of 1829. There is no doubt that a special condition of sale limiting the extent of title is no excuse for a purchaser not insisting on the production of a deed beyond those limits, of which he had notice: *Peto v. Hammond*, 30 Beav. 495. But in this instance the defendant put in evidence to show that neither he nor his solicitor, had any knowledge or belief that such an obligation existed. The main question therefore, before the Court was this, whether, in the absence of actual notice of the obligation, the defendants were bound to repair, upon the obligation of making enquiry arising from the nature of the property so as to amount to constructive notice.

It is hard to imagine a case to which the doctrine of implied or constructive notice applies more nearly than the situation of an owner of marsh or fen land lying below high water mark. It must be obvious to any person of ordinary discernment holding land in such a district to what he owes his protection from the rising tide. No person, indeed, purchasing property of this kind could shut his eyes to the fact that the very existence of his