were properly resident at Shields, he disallowed their travelling expenses altogether, whether from Stood to Newcastle, or from Strood to London; and he disallowed all claims for detention because it was not proved to his satisfaction that there would have been any detention at all if the trial had been at Newcastle.

Bovill, C. J.—As to whether the undertaking in question was given, the affidavits are rather contradictory; but it was made by the judge in the presence of the parties, and it was their duty to see what was written. The only safe guide for us is the judge's indorsement, and therefore we hold there was such an undertaking given. Was it, then, necessary that the undertaking should be embodied in an order? It is necessary if it is to be used as an order; but that was not the case here, and therefore it was not necessary to give validity to the undertaking, and it was binding on both parties. Then three objections were made with reference to the taxation; and, first, it was said that the master only allowed the expenses of the witnesses for two days in London, though the cause was in the paper six days. I think it was a question for the master whether the witnesses had been detained longer in London than they would have been in Newcastle. It was a matter for his discretion on the facts before him on both sides; and the objection must be made out very clearly that he exercised that discretion wrongly before we interfere; and that was not done. Then the second objection to the taxation was that the master refused to allow the travelling expenses of witnesses from Strood to Newcastle. In fact, they only incurred the expense of travelling from Strood to London. The answer to the objection is, that the witnesses did not go to Newcastle, and the expenses were not incurred. The third objection relating to the taxation was the disallowance of of the detention money. It was a question for the master whether, if the trial had taken place at Newcastle, there would have been any such detention. Some one must determine the question, and it is essentially one for the master; and on that point also it is not shown that he was clearly wrong. The rule must therefore be discharged.

Willes, J.—I am of the same opinion. I think there was an undertaking, and I have heard Lord Truro say that the attorneys should not be bound by such an undertaking made in the course of the cause, unless it is in writing. Here it was in writing, and was put into writing by the judge, who represents the Court. For the rest, the appeal is against the discretion of the master, and we should be very careful how we interfere, unless we can say that such and such an item is wrong, and we cannot go into every item.

Montague Smith, J.—I am of the same opinion. It is said that the master took into consideration the time that would have been occupied in trying the cause at Newcastle, and that only, and that he should not have done so. But I think he was right, for he followed the very words of the order, and he must go into probabilities. I cannot see that he did anything wrong.

Keating, J., concurred.

Rule discharged.

CHANCERY.

Hunt v. White.

Vendor and purchaser—Covenant—Quiet enjoyment.

A covenant for quiet enjoyment given by vendor to purchaser does not extend to protect the purchaser from a defect of title which the recitals of the deed, in which the covenant is contained, were sufficient to disclose.

[V. C. M. Feb. 23.—16 W. R. 478.]

This was a petition by S. Rogers, who had purchased property from W. M. Bush, the testator in the cause, praying that he, S. Rogers, might be admitted as a creditor against the testator's estate for damage in respect of a breach of the covenant for quiet enjoyment contained in the purchase deed.

It was believed, when W. M. Bush conveyed the property to the petitioner, that W. M. Bush was entitled to the estate in fee absolutely, whereas he merely held the fee simple subject to be divested on his death without issue, which event happened. The deeds recited in the conveyance from Bush to the petitioner were sufficient to disclose this defect of title.

The persons who took the estate on W. M. Bush's death without issue, brought an action against the petitioner to recover it, and there was no defence to such action. The petitioner therefore brought in a claim bofore the chief clerk in the suit filed to administer the testator's estate, to be admitted a creditor in respect of the damage he had suffered by being thus ejected. It was admitted that the covenant for title was restricted to the covenantor's own acts, but the plaintiff relied on the covenant for quiet enjoyment, which it was contended was an unlimited covenant, not restricted to the covenantor's own acts. The chief clerk refused to admit the claim of the purchaser, who thereupon presented this petition.

Browne, for the petitioner, cited Sugden's Vendors and Purchasers, 14th ed. 606, as to the generality of the covenant for quiet enjoyment, and contended that damage occasioned by the vendor's want of title, came within the provisions of that covenant.

Downing Bruce for trustees.

Cole, Q. C., and *Stiffe Everitt*, for other respondents, were not called on.

Malins, V.C., said that the covenant for quiet enjoyment could only extend to incumbrances and defects in the title of the covenantor, of which the purchasers had no notice; if the vendor had secretly created a mortgage, the covenant for quiet enjoyment would have protected the purchasers against that, but here the damage to the purchaser arose from misconception of the vendor's title as disclosed by the deed of conveyance itself. It could not be reasonably contended that the covenant extended to cover such a defect as this, especially as the covenant for title was restricted to the covenantor's own acts. The petition wholly failed, and must be dismissed with costs.