

Chany. Cham.]

MOODY v. TYRRELL—RE BAZELEY—KENNEDY v. BROWN.

[Master's Office.]

gent footing. He quotes with approval the language of Lord Justice Turner in *Viney v. Chaplin*, 27 L. J. Chy. 434: "I take it to be settled that a solicitor is not by virtue of his office entitled to receive purchase moneys, even although he may have possession of the deed of conveyance; and it would be strange if he were, for it is no part of the ordinary duty of a solicitor to receive money belonging to his client, and the deed of conveyance comes into his hands for a wholly different purpose;" again he approves of this language, "that it was no part of the ordinary business of a solicitor to receive purchase money, and he could not fix Plowman with the consequences of Roche's receipt, being unable to draw any distinction between purchase money and money due on mortgage." So that the power to receive money appears to rest on the object for which the attorney or solicitor was retained.

I think it is clear that when an attorney or solicitor is retained to collect a demand, and to take such proceedings as he may deem proper to effect this object, that it embraces the right to receive the amount from the defendant before or after suit, unless or until the plaintiff restricts or terminates the authority given to his solicitor; that by this employment the solicitor is appointed the agent of the plaintiff to demand and receive the claim, and to discharge effectually the party making the payment. This right does not allow the attorney or solicitor to receive money of the client because he may happen to have deeds, mortgages, or other papers in his hands belonging to him, unless the client instructs the solicitor to receive the money which may be paid him. It does not follow from this conclusion that a person ordered to pay money into court is effectually discharged by paying it to a solicitor; nor that money once paid into court can be paid out otherwise than personally to the party entitled to receive it, or to his agent duly appointed under a power of attorney. In the first case the Court requires an exact fulfilment of the terms of its decree, and in the latter it sees that the money goes directly to the hand entitled to receive it. In some cases the Court in England appears willing to relax somewhat this rule: *Ex p. De Beaumont*, 13 Jur. 354; *Waddilove v. Taylor*, 13 Jur. 1023; *Mansfield v. Green*, 1 W. N. 220.

In the present case the solicitor was retained by the plaintiff to collect from the defendant the demand, the subject of the suit. The solicitor was bound to take steps that would lead to this result, and was entitled at any time to receive from the defendant that which he was employed to collect. This power was never withdrawn,

and, in the exercise of it, he received \$900 of the claim, and to that extent he effectually discharged the defendant. The plaintiff cannot therefore collect this from the person who has paid it; and as these proceedings are taken to endeavour to effect this object, the application must be dismissed with costs.

RE BAZELEY.

Infants—Application of property for maintenance—
29 Vict., cap. 17, and 33 Vict., cap. 21, sec. 3.

33 Vict., cap. 21, s. 3 (O), only authorises the application of the interest on insurance moneys, apportioned to infants under 29 Vict., cap. 17, for the maintenance of the infants. The principal can, under these acts, only be applied for advancement, but under the general jurisdiction of the Court may be applied for maintenance.

[February 7, 1876—PROUDFOOT, V.C.]

The deceased father of the infants had insured his life under 29 Vict., cap. 17, for the benefit of his wife and children. The amount apportioned to the children was \$1,000, and was held by a trustee for them. It was shown that the income had already been anticipated to the extent of \$100, and that the necessities of the children required payment of a portion of the principal.

Foss now applied on behalf of the children for an order authorising the application of a portion of the principal for the maintenance of the infants.

PROUDFOOT, V.C.—I do not think that I could give any direction involving the application of the principal for maintenance if the case depended on 33 Vict., cap. 21., s. 3. That act only authorises the application of the interest for maintenance. The principal may be applied for advancement.

But the petitioner may amend his petition, asking relief under the general jurisdiction of the Court, and when that is done an order will be made.

Under the circumstances of this matter I think it would be a proper direction to sanction the application of \$100 for the immediate necessities of the children, and application may be made again if the necessity continue. The costs of this application to be paid out of the funds.

MASTER'S OFFICE.

KENNEDY v. BROWN.

Costs—Higher or lower scale.—Subject matter involved in the suit.

A bill was filed for the specific performance of a contract for sale of land, for a sum less than \$150. Before suit the plaintiff, the vendee, had entered