

Eng. Rep.]

DICKINSON V. TALBOT.

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MELLISH, L.J., was of the same opinion. The result of the cases at law was that when an arbitrator had once signed a paper which, on the face of it, purported to be his award, he was *functus officio*, and could not make any alteration in the award. And, though his Lordship regretted that costs to such an extent should be incurred, he was not certain whether it was not, on the whole, better in all such cases that the parties should come back to the court to set an error of this description right. His Lordship thought that there had been nothing on the part of the defendant which amounted to acquiescence, in the second award, for he had not been party to anything in the nature of an agreement to do so. He had done nothing beyond remaining passive. His Lordship also agreed with his learned brother as to the power of the arbitrator to give costs as between solicitor and client. Common law courts had no power to give costs in that way, and therefore, in the case of a reference by one of these courts, an arbitrator could only give party and party costs. But a court of equity had jurisdiction to give costs as between solicitor and client whenever it thought fit to do so, and consequently, when the costs of the suit were left in the discretion of the arbitrator, he had jurisdiction to give costs as between solicitor and client.

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Power of sale and exchange—Consent of tenant for life—Sale to tenant for life.

It is a well settled rule, that where trustees of a settlement have a power of sale and exchange over the settled estates, to be exercised at the request or with the consent of the tenant for life, they may sell to the tenant for life just as they may to any other person.

The reason for that rule is, that the consent of the tenant for life to the exercise of the power is required for his own benefit, and does not place him in any fiduciary relation to the persons entitled in remainder.

Provided a sale by trustees to a tenant for life is *bona fide* and at a fair value, it is immaterial what was the object for which he made the purchase.

[L. J., 19 W. R. 138.]

This was an appeal from a decision of Vice-Chancellor Stuart.

By an indenture dated the 2nd January, 1849, and made between Lord Skelmersdale and the Rev. S. Master of the first part, Charles Scarisbrick of the second part, and Ralph Anthony Thicknesse and John Woodcock of the third part, certain manors, lands and hereditaments, known as the Wrightington Estate, were conveyed to R. A. Thicknesse and John Woodcock and their heirs, to hold the same unto R. A. Thicknesse and John Woodcock and their heirs, to the use of Charles Scarisbrick and his assigns during his life, without impeachment of waste, with remainder to trustees to preserve contingent remainders, with remainders to the issue of Charles Scarisbrick as therein mentioned, with an ultimate remainder, in the events which happened, to the use of the plaintiff's mother for life, with remainder to her first and other sons successively in tail male. The settlement contained a power for the trustees at any time or times, at the request in writing of any person who should for the time being, by virtue of the limitations thereinbefore contained, be either the actual possessor of or entitled to the receipt of the rents of the settled

property so as to be tenant for life or tenant in tail of the age of twenty-one years, to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other lands situate in England or Wales, all or any part of the settled property and the inheritance thereof in fee to any person or persons whomsoever, for such price or prices, or for such an equivalent in lands, as to the trustees should seem reasonable.

By another indenture of the same date, and made between the same parties, another estate, called the Eccleston Estate, was conveyed to the same trustees, upon (in the events which happened) the same uses, and the like powers of sale and exchange were given.

Charles Scarisbrick remained in possession of both estates until his death, which happened on the 6th of May, 1860. He was never married. By the death of the other intervening tenants for life, the plaintiff, in 1863, became tenant in tail in possession of both estates. He, in 1864, filed the bill in this suit against the representatives of the trustees of the two settlements, and the executors and trustees of Charles Scarisbrick, for the purpose of impeaching certain dealings with some portions of the estates, called respectively Bottlingwood and Hurst House, which had taken place between Charles Scarisbrick and the trustees. Both those properties had been sold and conveyed by the trustees to Charles Scarisbrick; and the plaintiff sought to have these transactions set aside on the ground that the sales had been made at an undervalue, and also that as to Bottlingwood there had been a collusion between the trustees and the tenant for life, inasmuch as Mr. Scarisbrick desired to exchange Bottlingwood with Lord Balcarras, a neighbouring landowner, for other property, and, finding that there were some conveyancing difficulties as to the exercise of the power of exchange, because it was proposed to exchange only the surface, agreed with the trustees that they should sell Bottlingwood to him under the power of sale, in order that he might afterwards, as he in fact did, exchange it with Lord Balcarras. It was alleged that the Hurst House estate too was bought in order that Mr. Scarisbrick might exchange it with another person.

The Vice-Chancellor dismissed the bill, except so far as it sought an account and the delivery up of title deeds to the plaintiff. The plaintiff appealed.

Greene, Q. C., Dickinson, Q. C., and F. Riddell, for the plaintiff, contended that there was a fraud upon the power. They referred to *Howard v. Duane*, T. & R. 81; *Grover v. Hugell*, 2 Russ. 428.

Sir R. Palmer, Q. C., O. Morgan, Q. C., and G. Hall, for the executors and trustees of Charles Scarisbrick, and

Kirslake, Q. C., and Raach, for the representatives of the trustees, were not called upon.

JAMES, L. J.—The Vice-Chancellor was of opinion that the plaintiff's case, in respect of the two properties in question, which has been argued before us on the appeal, had failed, and dismissed that part of the bill with costs. I am entirely of the same opinion. In my judgment, a case with less foundation, more idle and vexatious, to be brought by a *cestui que trust* against the repre-