

Eng. Rep.]

PICKARD V. HINE—PEARCE V. MORRIS.

[Eng. Rep.]

COCKBURN, C.J.—Certainly not. The argument of Mr. Harcourt calls on us to take upon ourselves the functions of the Legislature and to establish a new principle. True it is that to do full justice in some cases damages are so great as to cause serious inconvenience, but that is no reason for altering a principle. If a railway undertakes to carry a passenger, and is guilty of negligence, the passenger is entitled to bring an action, and in considering the case juries are to take into account two things: first, pecuniary loss in profession or business; secondly, injury to the person or health; for pecuniary loss the jury should consider not merely the amount of income but also the reasonable probability of acquiring larger income in future. It would be monstrous if when a man has reached a certain stage in his career, yet judging from the past you can see with reasonable certainty that he will increase his income, you should exclude such considerations from the jury. You would exclude a most important element and inflict the gravest injustice. The jury are bound to take into account not only income, but the destruction and annihilation of health and prospects. Here is a man at the outset of life, of great promise, with his prospects ruined and his health destroyed. I consider £5,000 within reasonable limits.

MELLOR, LUSH, HANNEN, J.J., concurred.

Rule refused.

CHANCERY.

PICKARD V. HINE.

Practice—Appeal by married woman without next friend

A married woman having been made a party to a suit in respect of her separate estate, appealed without the intervention of a next friend. Appeal directed to stand over for a next friend to be appointed, appellant's solicitors to give an undertaking to pay the costs of the day; in default appeal to be dismissed with costs.

[L. C., 18 W. R. 75.]

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

One of the appellants had become bankrupt since the decree, and the other, a married woman, who had been made a defendant to the suit in respect of her separate estate, had appealed without the intervention of a next friend.

Dickinson, Q. C., and Willis, for the respondents, took a preliminary objection to the prosecution of the appeal by the married woman without a next friend. They cited *Elliot v. Ince*, 5 W. R. 465, 482, 7 De G. M. & G. 475.

Schomberg, Q. C., and Bush, for the appellants.—This case is not governed by *Elliot v. Ince*. Here the married woman has been made a defendant with respect to her separate estate. She is to some extent considered a *feme sole*, and this is an answer to the objection.

Lord HATHERLEY, C., after observing that unless some case was made he could not go on without a next friend, directed the hearing of the appeal to stand over, with leave to amend the petition of appeal by adding a next friend, amendment to be made and undertaking by appellants' solicitors to pay the costs of the day, to be given within a week; otherwise the appeal to be dismissed with costs.

PEARCE V. MORRIS.

Mortgage—Acceptance of tender by mortgagee—Re-conveyance.

A mortgagee on accepting a tender of his principal, interest, and costs from the owner of a part of the equity of redemption, is bound to convey the mortgaged estate, and to hand over the title-deeds to the person making the tender, and will not by so doing incur any liability to the other owners of the equity of redemption. If, however, the mortgagee accept a tender from a mere stranger to the estate, he is not bound to convey or give up the title-deeds to such stranger.

[L. C. 18 W. R. 196.]

This was an appeal from a decision of the Master of the Rolls.

The plaintiff had contracted with the mortgagor for the purchase of a portion of certain lands of which the defendant was mortgagee.

The plaintiff then requested the defendant to convey the legal estate to him, and to hand over the title-deeds, but this the defendant refused to do, on the ground that he held the legal estate upon trust for the owners of the equity of redemption. The plaintiff thereupon filed his bill, praying that the plaintiff might be declared entitled to have the mortgaged premises transferred to him, and the title-deeds delivered up to him, and that the defendant might be ordered to transfer the premises and deliver up the deeds accordingly.

The portion of the premises which the plaintiff had contracted to purchase was conveyed to him after the bill was filed, and this fact was proved by affidavit.

The Master of the Rolls made a decree for conveyance and for the delivering up of the deeds to the plaintiff, the form of conveyance to be settled in chambers, and from this decree the defendant appealed.

The case is reported in the court below (17 W. R. 1001, L. R. 8 Eq. 217), where the facts are more fully stated.

Jessel, Q. C., and Nalder, for the appellant, the defendant.—The plaintiff had a mere contract, which might at any time have gone off and left him a mere stranger to the estate. But if he were entitled to the equity of redemption of a portion of the mortgaged premises he would have no right to a conveyance. We were compelled, at the risk of losing our interest, to accept the tender, but having notice of conflicting claims, we were bound not to convey until we had proof of who the real owners of the equity of redemption were, otherwise we might have been held liable for a breach of trust. This was not a contract to transfer, but to redeem. They cited *Cholmondeley v. Clinton*, 2 J. & W. 184; *James v. Bow*, 3 Swanst. 234; *Wicks v. Scrivens*, 1 J. & H. 215; *Henley v. Stone*, 3 Beav. 355; *Colyer v. Colyer*, 11 W. R. 587.

Southgate, Q. C., and Vickers, for the plaintiff.—The plaintiff became owner of the charge by paying off the defendant, who accepted our tender, and is, therefore, estopped from denying our right to redemption and conveyance. If this were otherwise, we might have great difficulty in getting contribution from the other owners of the equity of redemption. As to the form of the decree, Lord Romilly said he would settle the conveyance in chambers; but even if the legal estate were conveyed to us without limitation, it would be absurd to contend that