Thompson v. McCarthy.

Mortgage—Redemption.

The purchaser of an equity of redemption in lands pending foreclosure, who has paid off the plaintiff, is not entitled to the assignment of the mortgage debt; he can only demand a re conveyance of the premises or a discharge of the mortgage.

[June 20.—Mr. Stephens].

This was a motion for an order on plaintiff to assign the mortgage in question to the defendant McCarthy, he having paid the amount due on the mortgage to the plaintiff.

Rye for the plaintiff.

The defendant's can compel a re-conveyance and are not obliged to accept a discharge. The plaintiff's solicitor refused to give anything else: *Finlayson* v. *Mills*, 11 Gr. 218; *Clark* v. *May*, 16 Beav. 273; Leith Real Prop. Stat. 350; Story Eq. sec. 1035; *Stronge* v. *Hawkes*, 2 Jur. N.S. 388.

Mulock for plaintiff. The plaintiff is bound to assign the premises, but not the debt. The defendant having been a purchaser of the equity of redemption, his legal position was that he was bound to pay off the mortgage debt: *McDonald* v. *Reynolds*, 14 Gr. 691. All that the mortgagee is bound to do is to transfer the legal estate: *Dunstan* v. *Patterson*, 2 Philips 341-345; *James* v. *Biou*, 3 Swans. 241; Seaton on Decrees, v. 1, p. 439; Fisher Mort. 979, vol. 2, Ed. 1868; *Smith* v. *Green*, 1 Col. 563.

The Referee refused the application so far as it asked an assignment of the mortgage and mortgage debt, the defendant to have the costs of the motion.

Swan v. Adams.

Dismissing Bill—Security for costs.

Where the plaintiff had parted with his interest in the lands in question, proceedings were stayed until security should be given for the costs, or until the suit was revived.

[June 21.—Mr. Stephens].

H. Cassels moved on behalf of the defendant Wilson for an order to dismiss plaintiff's bill, or for security for costs on the ground that plaintiff had parted with his interest in the property in question.

Appelbe for plaintiff contended that defendant was only entitled to have security for costs if plaintiff were insolvent and carrying on the suit for another's benefit: *Mason* v. *Jeffrey*, 2 Chy. Ch. 15. The defendant should have produced a certified copy of the conveyance: Daniel Prac. 270. The case of *Johnston* v. *Thomas*, 11 Beav. 501, shows that the suit is only defective. The plaintiff has a right to go on for his costs: *Wallace* v. *Ford*, 1 Chy. Ch. 282. The proper course was to give plaintiff notice to revive: *Cameron* v. *Eager*, 6 Prac. R. 117.

Cassels in reply. The Court has a discretion in matters of security: *Hagarth* v. *Wilkinson*, 12 Q.B. 851; *Lindsay* v. *Hurd*, (Blake, V.C.) There is no prayer for damages, and the plaintiff will not be permitted to harass the defendant when his interest has ceased. He can have no costs except the filing of the bill.

The Referee thought that the order should go to stay proceedings until security should be given, or the present defective state of the record cured.

Yourex v. Alcombrack.

Taxes—Rents and profits—Purchase money, interest on—Possession.

When a purchaser had paid school taxes for the year and had paid his purchase money, the plaintiff having received the rents and profits up to a time subsequent to the payment of the money into Court, and subsequent to the end of the year for which the taxes had been paid. Upon an application on behalf of the plaintiff to have the money paid out to him, the purchaser was held entitled to be repaid the taxes and the interest on his purchase money during the time the plaintiff received the rents and profits, the plaintiff to have the excess (if any) of such interest over the rents and profits.

[June 27.—Mr. Stephens].

This was an application for the payment out of Court to the plaintiff in a mortgage suit of the amount found due him. The purchaser asked to be paid the sum of $78, the amount of half year's interest, also school taxes for 1876, and that he should be discharged from paying interest on his purchase money to 8th October, 1876. The purchase money was paid into Court May 22, 1876.

Hoyles for purchaser, relied on *Bank of Montreal* v. *Fox*, 6 Prac. R. 217; *Brady* v. *Keenan*, 6 Prac. R. 262; *Liscombe* v. *Gross*, 6 Prac. R. 271.

Crickmore for plaintiff, contended that the conditions of sale made an express contract to pay interest for three months.

The Referee—The order may go on payment by the purchaser of the difference (if any) between the rents and profits and the interest during the period in dispute.