

gage security; and a solicitor who advances money on mortgage—as was decided by Lord Justice (then Mr. Justice) Kay in *In re Roberts, ex parte Evans*, 59 Law J. Rep. Chanc. 25; L.R. 43 Ch.D. 52—cannot charge the mortgagor with profit costs for the preparation of the mortgage.* As the learned judge pointed out in that case, the reason why such costs are not allowed is not because of any fiduciary relationship existing between the solicitor and the mortgagor, but because they are not mortgagor's costs at all. They are mortgagee's costs, as a moment's consideration will show. The only case (said his lordship) in which such costs could be allowed is where there is a mortgagee against whom they could be charged, and who would have to pay them to his own solicitor, and who could then charge them to the mortgagor. It is obvious that if the mortgagee employs no solicitor to prepare the mortgage, but does the work himself, he cannot charge any costs, inasmuch as they have never been incurred at all. In the more recent case of *Field v. Hopkins*, 59 L.J. Rep. Ch. 174; L.R. 44 Ch.D. 524, Mr. Justice Kay adhered to and explained his decision in *In re Roberts (ubi sup.)*. At the time it was pronounced that decision gave rise to some little controversy and adverse comment, but it has been acted upon and acquiesced in in several subsequent cases—notably by the Court of Appeal in *In re Wallis ex parte Liquorish*, 59 L.J. Rep. Q.B. 500; L.R. 25 Q.B.D. 176—and must therefore be regarded as perfectly sound law.

The decision of the Court of Appeal in *In re Wallis (ubi sup.)* was to the effect that a mortgagee who is a solicitor, and who in that capacity acts on his own behalf in proceedings relating to the mortgage security, is not entitled, in the absence of express contract, to recover profit costs from the mortgagor, but will be limited to disbursements out of pocket. The decision of Vice-Chancellor Bacon in *In re Donaldson*, 54 L.J. Rep. Ch. 151; L.R. 27 Ch.D. 544, that where one of a body of mortgagees is a solicitor acting as a solicitor in enforcing the security he is entitled to profit costs, must therefore be considered as practically overruled by *In re Wallis (ubi sup.)*. The principle is that a solicitor-mortgagee is not to receive remuneration for his own trouble; and it can make no difference in the application of that principle whether the trouble is taken by the solicitor on his own behalf solely or on behalf of himself jointly with some one else.