

closed agent, of the alleged principal debtor, the incorporated Cream and Butter Company; for the incorporated company was no party to that action, and there is no allegation of a joint liability of the incorporated company and Mrs. Clark in respect of the advances for which the claimant has recovered his judgment.

In *Morel Brothers v. Earl of Westmorland*, [1903] A. C. 11, the House of Lords held that the plaintiffs having an alternative claim against one or the other of the two defendants, and having obtained an interlocutory judgment against one of such defendants, who *ex hypothesi* was agent, such judgment was conclusive evidence of an election not to proceed against the other defendant.

So in *McLeod v. Power*, [1898] 2 Ch. 295, a judgment against one of two joint debtors was held to be a bar to proceedings against the other. See also *The Belcairn*, 10 P. D. 161.

And a late case of *Cross v. Matthew*, 20 Times L. R. 603, bears some resemblance to the last cited case and to the present one. In that case the debt was contracted by one of the defendants as agent of the other defendant, who was the principal debtor, though credit appeared to have been given by the plaintiffs to the agent alone. Judgment by default having been obtained against the agent, the County Court Judge before whom the action was tried, adjourned the case to enable the plaintiffs to make an application to set aside that interlocutory judgment; whereupon the judgment was set aside, and the case remitted again to the County Court for trial, and resulted in a judgment being entered in favour of the agent, and against the principal. On appeal it was held that the plaintiffs, by signing judgment against the agent, had conclusively elected to proceed against him; and that there was no power in the Court to set aside that judgment, so as to revive the right of the plaintiffs to proceed against the principal.

These authorities are, I think, conclusive against the claimant Luxton in these proceedings, and, as he is conclusively bound by his election to sue Mrs. Clark for the same cause of action as he seeks to enforce here, I must dismiss his claim with costs.