

Eng. Rep.]

WITHINGTON V. TATE.

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improper motive, but it was done with great want of judgment. My opinion from reading these papers and the comments and the remarks in the anonymous publication in the *Volunteer Service Gazette* is that it has the direct effect of influencing the suit, and therefore I am obliged to make the order that I have been obliged to make on former occasions, and which was made by the present Lord Chancellor in *Tichborne v. Tichborne*. I shall make the same order as before, but I shall direct that it shall not be acted upon for a fortnight, to allow Mr. Collette to take the opinion of a superior tribunal upon the subject, or to make an apology and pay the costs of the motion. It appears to me, to say the least of it, a serious error of judgment on the part of Mr. Collette, and it is necessary that the Court should interfere.

When I look at the case of the editor, I think that he did not show quite the forbearance towards Mr. Daw that he might have done, considering how materially interested Mr. Daw was, and that he might have made some little excuse for the warmth Mr. Daw showed upon the subject. At the same time there is nothing against the editor for which I can require him either to make an apology or to pay the costs of the motion, but I cannot give him costs: that is out of the question. He has certainly shown a tendency to decide against Mr. Daw. I also feel for the difficult position in which an editor is placed in such cases; but with respect to him I can make no order. The order as to Mr. Collette is that he stands committed for contempt of this court, and I desire that the order shall not be enforced for a fortnight.

Dec. 15.—Lord ROMILLY, M.R., said that there seemed to have been some misapprehension as to his judgment in reference to this matter. It seemed to have been supposed that the effect of the judgment would be to prevent a free discussion of the merits of inventions or anything of that description in the newspapers. That was not his intention. The question to be determined in the suit was whether Mr. Daw's invention was new, and the reason he refused the editor his costs was that after he had notice that the gentleman who wrote the anonymous paper was the solicitor to the defendant, he published another letter from him which had nothing to do with the merits of Mr. Daw's invention, and had refused to allow Mr. Daw to defend in his paper the novelty of the invention.

WITHINGTON V. TATE.

Mortgage—Transfer—Redemption—Payment to party not authorised to receive—Loss by defaulting solicitor—Estoppel.

A mortgage was transferred to the plaintiff without notice to the mortgagors, who were trustees for a charity, and they afterwards repaid the principal of the debt to the solicitors of the mortgagee and the plaintiff, who had always received the interest on the debt on their behalf. A deed was executed by the mortgagee purporting to be a re-conveyance, but there was no endorsed receipt, and it appeared that the mortgagee believed the deed only to be an appointment to new charity trustees. The solicitors did not communicate the fact of the payment to the plaintiff, and the money was lost by their default.

Held, that the plaintiff was not bound to give notice of the transfer to the mortgagors, and the payment was not a payment to him, and, as he had the legal estate, he was entitled to foreclose.

[M. R. 17. W. R. 247.]

The question to be determined in this suit was as to how a loss occasioned by a defaulting solicitor should be borne.

By a deed dated the 7th of July, 1858, the defendants, who were the trustees of a charity, mortgaged the charity property to Messrs. Nixon & Thew, of Liverpool, to secure £1,400 and interest.

By an indenture dated the 1st of January, 1864, to which the defendants were not parties, Messrs. Nixon & Thew transferred the mortgage to the plaintiff.

Messrs. Stockley & Wrigley, of Liverpool, were the solicitors both of Messrs. Nixon & Thew and of the plaintiff, and the interest on the mortgage money was always paid by the defendants to them for Messrs. Nixon & Thew. They did not give notice to the defendants of the transfer, but continued to receive the interest for the plaintiff as they had done for Messrs. Nixon & Thew.

The documents of title, including the original mortgage, remained at their office, and after the transfer was executed it remained there also.

In the early part of 1864 the defendants gave notice to Messrs. Stockley & Wrigley of their intention to redeem, and on the 15th of August, 1864, one of them attended at their office and paid the sum of £1,438 6s 5d.

Upon this payment Messrs. Stockley & Wrigley gave the defendants a receipt in the following form:—

“Rev. Dr. Briggs and others to Nixon & Thew.

	£	s.	d.
To amount of principal....	1,400	0	0
Interest on ditto from February 3 to August 15—			
194 days, at 5 per cent.....	£37	4s.	1d.
Less tax..	19s.	8d.	
Costs.....		36	4 5
		2	2 0

£1,438 6 5

Received one thousand four hundred and thirty-eight pounds six shillings and five pence.

STOCKLEY & WRIGLEY.”

15th August, 1864.

Messrs. Stockley & Wrigley thereupon handed over to Robert Chapman, one of the defendants, all the deeds and documents of title except the transfer to the plaintiff, and he sent them, together with the above mentioned receipt, to the defendants' solicitor with instructions to prepare a reconveyance of the mortgaged property. After some delay the draft was agreed to by the respective solicitors of the defendants and of Messrs. Nixon & Thew, and the deed was executed. It bore date the 31st of September, 1864, and purported to reconvey the property in question to the present defendants as trustees for the charity, discharged of the mortgage debt, and contained a recital that the defendants had repaid to Nixon & Thew the principal and interest of the mortgage debt, and a covenant by them that they had not incumbered. No receipt for the mortgage money was endorsed on the deed, and Messrs. Nixon & Thew stated that they executed the deed in the belief that it was necessary to complete the title of some of the defendants who