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50 ER 162

Id. vLex Justis VLEX-806148509

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Text

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ROLLS COURT

Greenwood
and
Churchill

S. C. 14 L. J. Ch. 143; 9 Jur. 196.

[413] greenwood . churchill. (Ex relatione.) Feb. 21, 1845. [S. C. 14 L. J. Ch. 143; 9 Jur. 196.] On a sale under the Court in June 1839, it was provided by the conditions, that the abstract should be delivered in twenty-one days, that the purchaser should be entitled to the rents from October, and pay his purchase-money in November, and if "from any cause whatever" it should not be paid at that time, he should pay interest at 5 per cent. The vendors were unable to deliver the abstract within the time, and there was great delay and difficulty, on their part, in making out their title, which was not complete till 1845. The purchaser had entered into possession. On a motion made in 1845 to pay the purchase-money and interest into Court, the Court held, that it could not relieve the purchaser from payment of interest but made the order without prejudice to any application for compensation. On the 27th of June 1839 a considerable property was sold under the Court, subject to special conditions of sale. J. C. Eisley became the purchaser. It was stipulated by the conditions of sale that the abstract should be delivered within twenty-one days. The purchaser was to have the rents from the 11th of October 1839, and pay in his purchase-money on or before the 9th of November 1839 ; but if, from any cause whatever, the purchase-money should not be paid into the bank by the time before stipulated, the purchaser was thereupon to pay interest thereof at 5 per cent, per annum. The purchaser entered into possession, and had exercised distinct acts of ownership, but had not paid the purchase-money into Court, in consequence of the delay of the vendors in making out the title. An imperfect abstract was delivered on the 18th of July 1839, and it was insisted that the first perfect one was delivered in August 1841. Great difficulties and delay had occurred in making out the title; but

ultimately the purchaser accepted it as it was. A motion was now made that the purchaser should pay his purchase-money, 11,785, into Court (which [414] part of the motion was not resisted), together with interest at 5 per cent, from the 9th of November 1839. The only question was as to the interest. Mr. Hodgson and Mr. Cole, for the Plaintiff, and Mr. Turner and Mr. Stinton, for other parties, contended, that the purchaser was liable to pay interest according to the express condition of the contract, *Esdale v. Siephenson* (1 Sim. & St. 122), and that he was not entitled to retain both his purchase-money and possession of the estate. Mr. Kindersley and Mr. Chandless, contra. The purchaser ought not to be charged with interest at so high a rate as 5 per cent.; the delay having been wholly created by the vendors, and by their neglect in not ascertaining their title before the sale, so as to be able to deliver a perfect abstract within the time agreed upon and to evidence their title within a limited period. The title is not perfect even now, though the purchaser has agreed to accept it. the master of the rolls [Lord Langdale]. This is, no doubt, a case of hardship on the purchaser, who has acted in a laudable and generous manner; and there may be a reason for considering his case in another form; but at present it appears that he is seeking to procure a variation of the contract. The conditions expressly provide, that the purchase-money shall be paid into Court before the 9th of November 1839; and if any delay arose, from any cause whatever, it was to be paid with interest at 5 per cent. The vendors were also to deliver an abstract within SBBAV. 41B. IN RE WELLS 163 twenty-one days from [415] the 27th of June 1839; but they were not in a situation to do so, and, as the purchaser says, they did not deliver any abstract before the 20th of August 1841. Since then, they have made out a title which the purchaser consents to accept, but which, it is said, is not such a title as he was bound to accept. If, however, the purchaser consents to accept it, I must consider it sufficient. The vendors having now shewn a title, it is asked that the purchase-money and interest may be paid into Court; and the only objection made is as to the interest. I think, however, that no reasons have been stated which furnish any ground for altering the express terms of the contract. It is said that the purchaser has been put to an expense to which he would not have been liable if the state of the title had been known. This may be a ground for considering his case, and may entitle him to compensation. The purchaser might have applied to the Court when he found that he was likely to be put to expense or inconvenience, but upon the present application the contract cannot be altered. I must therefore make the order which is asked, without prejudice to the purchaser's right, if so advised, to make any distinct application for compensation out of money in Court.