

[338] WILLIAMS v. THE PRINCE OF WALES LIFE, &C., COMPANY. Jan. 26, 1857.

[S. C. 3 Jur. (N. S.) 55.]

An undertaking to produce documents to the Plaintiff means to him, his solicitor and agents.

A Plaintiff obtaining information from the production of documents in the Defendant's possession is not at liberty to make it public, and an injunction will, if necessary, be granted to restrain him. A Plaintiff, having published statements relative to the matters in question, was, as a condition for making an order for production of documents, required to undertake, "not to make public or communicate to any stranger the contents of such documents."

This suit was instituted by the Plaintiff, a shareholder, on behalf, &c., to make the directors responsible for large losses on policies on the lives of Mr. Joddrell, Mr. Walter Palmer and others, which, it was alleged, the directors had improperly granted.

Shortly after the filing of the bill, on the usual summons for an order for production, it was stated on affidavit by the secretary that the documents amounted to 37,000, and that it required three months to schedule them.

Whereupon an order was made, dated the 19th of December 1856, whereby the company were ordered within two months, to make the usual affidavit as to documents, "the Defendants, by their solicitor, undertaking to produce to the Plaintiff, on and after the 14th of January 1857, such of the said documents as the company, by their deed of settlement, are bound to produce to a shareholder."

The Plaintiff and the clerk of his solicitor attended to inspect, but the Defendants would allow no inspection of the Share Register Book, and would not allow the clerk to inspect any of the documents, insisting that [339] the Plaintiff alone was entitled to an inspection under the undertaking. They also limited the inspection to one hour *per diem*.

A motion was made that the Defendants might produce "to the Plaintiff, his solicitor or agent, the Share Register Book" and other documents in accordance with their undertaking of the 19th of December.

The affidavits of the Defendant stated that the Plaintiff, who had but a trifling interest in the company, was desirous of damaging it, and that he had, pending the suit, published prejudicial statements relative to the matters stated by his bill. The affidavits also stated that, during the inspection, the solicitor's clerk had conducted himself in a noisy, boisterous, rude, and offensive manner. This he abstained from answering, as having no bearing on the question.

Mr. R. Palmer and Mr. C. T. Simpson, in support of the motion.

Mr. Selwyn and Mr. Graham Hastings, *contrâ*.

THE MASTER OF THE ROLLS [Sir John Romilly]. I am of opinion that both parties are under a mistake as to their rights.

I am of opinion that every undertaking to produce means the ordinary production in a cause, and that an undertaking to produce to the Plaintiff means to him, his solicitor and agents, unless that be guarded against and be so expressed. It is said that the Defendants are only bound to produce in the manner pointed out by the deed; that is not the terms of the undertaking.

[340] Therefore the Defendants are bound to produce the documents at all reasonable times and at a reasonable notice, but in such a manner as not to interfere with the business of the company.

On the other hand, it is not the right of a Plaintiff, who has obtained access to the Defendants' papers, to make them public. The Court has granted injunctions to prevent it, and I myself have done so, to prevent a Plaintiff, a merchant, from making public information obtained under the order for production.

I shall only make the order in this case, upon the Plaintiff's undertaking not to make public or communicate to any stranger to the suit the contents of such documents, and not to make them public in any way.

As to the conduct of the solicitor's clerk, I think he was right in not answering these affidavits; there must have been some misapprehension on the matter. It is the bounden duty of every Plaintiff who inspects, to do it in a quiet, peaceable, and decorous manner, in order that the business may be conducted in the only way in which it is possible for business to be transacted. If the contrary course were continued, I should hold the Plaintiff justified in withholding the inspection until it was conducted in a peaceable, decorous, and gentlemanly manner.

[341] TWEEDALE v. TWEEDALE. Jan. 22, 1857.

[Followed, *Pledge v. Carr* [1895], 1 Ch. 51 [1896]; A. C. 187. Cf. *Vint v. Pargel*, 1858, 2 De G. & J. 611; 44 E. R. 1126 (with note).]

A mortgage was given for a judgment debt. There was a prior equitable charge, of which the mortgagee had no direct notice, but no investigation of title or production of deeds was had, besides which, by arrangement, the mortgagor's solicitor prepared the deed for the mortgagee's solicitor. The Court concluded that the arrangement was to give a mortgage subject to existing charges, and, also, that the mortgagee was affected by the notice possessed by the mortgagor's solicitor of the prior equitable title.

A. made two equitable mortgages of two several estates, the one to A. and the other to B. He then executed a legal mortgage of both to C., who had constructive notice of the prior equitable mortgages. B. obtained a transfer of A.'s mortgage. Held, that C. could only redeem B., on payment of both debts.

In 1841 Abraham Tweedale made an equitable mortgage to Chadwick of some property in Yorkshire Street, by means of a deposit of the deeds and by a memorandum, whereby he agreed to make a legal mortgage for £2500.

In 1848 Abraham Tweedale made a like equitable mortgage to the Plaintiff, Samuel Tweedale, of a leasehold property in Alfred Street, to secure all moneys due or thereafter to become due.

On the 21st of February 1856 Abraham Tweedale executed a *legal* mortgage of both properties to Rawstone to secure £790, under circumstances which are hereafter stated and which gave rise to a question of notice, as to the Alfred Street property only, Rawstone claiming no priority over Chadwick.

On the 2d of April 1856 the Plaintiff (being liable to Chadwick for the amount of his mortgage, as representing the surety) paid off Chadwick, and obtained a transfer of his equitable mortgage.

The question being, whether Rawstone had, at the date of his legal mortgage, notice of the prior equitable [342] mortgage of the Alfred Street property, it is necessary to refer to the circumstances relating to the execution of Rawstone's mortgage, which were these:—

In January 1856 Rawstone obtained a judgment against Abraham Tweedale for £791, on which a *fi. fa.* was issued. Mr. Sellers (Rawstone's solicitor), in his evidence, stated as follows:—Early in February 1856 Abraham Tweedale, through his solicitor, Mr. Hartley, proposed to me, as solicitor of the Plaintiff in the action that, in order to save the expense and scandal of a seizure, Abraham Tweedale should give security for the judgment debt, in the shape of a mortgage upon the freehold and leasehold property, which he represented to me as being a sufficient security for the amount. I, as the solicitor of the Plaintiff, accepted this offer, and in order to avoid expense and delay, consented that Mr. Hartley, who was well acquainted with the title to the premises, should prepare the draft of the mortgage to Rawstone, and have the same engrossed, which Mr. Hartley accordingly did. But the mortgage deed was, of course, submitted to my approval as solicitor of Rawstone, and I being satisfied with the same, on behalf of Rawstone, procured the same to be executed by Abraham Tweedale.

Mr. Hartley, in his evidence, confirmed this, and also stated as follows:—Early in February 1856, while investigating the state of Abraham Tweedale's affairs, I was