

REPORTS
OF
CASES ARGUED AND DETERMINED.

IN THE
High Court of Chancery,

FROM THE YEAR M DCC LXXXIX TO M DCCC XVII.

WITH A DIGESTED INDEX.

BY FRANCIS VESEY, JUN. ESQ.
OF LINCOLN'S INN, BARRISTER AT LAW.

In Twenty Volumes.

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FROM THE LAST LONDON EDITION, WITH THE NOTES OF FRANCIS VESEY, JUN. ESQ.
AND THE EXTENSIVE ANNOTATIONS OF JOHN E. HOVENDEN, ESQ.
OF GRAY'S INN, BARRISTER AT LAW.

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LORD ELDON, Lord Chancellor.

SIR WILLIAM GRANT, KNT., Master of the Rolls.

HON. SPENCER PERCEVAL, Attorney General.

SIR THOMAS MANNERS SUTTON, KNT., Solicitor General.

MILLET v. ROWSE.

[1802, JULY 31.]

UPON marriage of a ward of the Court, under flagrant circumstances, the husband obtaining a license upon a false oath, that she was of age, the clergyman was ordered to attend, and reprimanded: the husband was committed, and ordered to be indicted. Being convicted and having suffered the punishment, upon his petition to be discharged on executing a settlement, the Lord Chancellor would not approve a proposal giving him any farther interest than, in case of his surviving and no children, under her appointment; requiring the fund to be transferred to the Accountant General: with a trust declared to pay the dividends to her separate use for life, from time to time, and not by way of anticipation: after her decease the capital among all her children by any marriage: if none, and he survives, according to her appointment by Will; if no appointment, to her next of kin; and if he survives, subject to her appointment, to her, her executors, &c.

No costs to the husband, [p. 419.]

JAMES THOMPSON having been married to Maria Withers, a Ward of the Court of the age of fourteen, by license, to procure which he took the usual oath, a petition was presented; and the parties, and the clergyman (1), who performed the ceremony, attending in Court under an order for that purpose, and the young woman appearing evidently to be under age, Lord Rosslyn, then Lord Chancellor, severely reprimanded the clergyman; and, committing Thompson, directed, that he should be prosecuted. He was accordingly indicted; and convicted; and, having suffered the punishment of the pillory and imprisonment, he presented a petition; praying, that he may be discharged upon executing a settlement according to a proposal, approved by the Master. His proposal was, that the property, to which the infant was entitled, consisting of 1000*l.* stock, should be vested in trustees for the separate use of the infant for life; and after her decease for the children: if there should be no children, and she should survive, in trust for the infant, her executors, and administrators; and if he should survive, for him, his executors, &c.

A petition in opposition was presented by the mother of the infant; making a different proposal.

Mr. *Roupell*, for the Petitioner Thompson.—Mr. Pemberton, *contra*.

* The Lord CHANCELLOR [ELDON].—In a case flagrant, [* 420] as this is, I should have made all the alterations proposed by the petition of the mother. The only settlement I ever will approve is this. Instead of trustees the fund shall stand in the name of the Accountant General; where it will be always safe; and a trust shall be declared for the separate use of this infant for life, to be paid to her from time to time, and not by way of anticipation,

(1) See, *ante*, *Priestley v. Lambe*, vol. vi. 421; *Warton v. Yorke*, *post*, vol. xix. 451.

during her life: after her decease the capital to go among all her children by this or any other marriage (1): if she dies without any children in the life of Thompson, then according to her appointment by will; and, in case she makes no appointment, to her next of kin. In case he redeems himself by good behavior during her life, she may give it to him by will. If she does not, I never will let him touch a farthing of it. If she survives him, it shall go according to her appointment by deed or will, and if she makes no appointment, to her, her executors, &c.

When he shall have executed a settlement according to these directions, and not till then, let him be discharged. I shall give him no costs. The costs of the other parties must come out of the fund (2).

As to the consequences of a contempt incurred by marrying or assisting in improperly procuring the marriage of a ward of Court, see the note to *Priestley v. Lambe*, 6 V. 421, with the farther references there given; and also note 4 to *Nicholson v. Squire*, 16 V. 259.

ANDREWS v. EMERSON.

[1802, August 2.]

THE rule, that an advance of 10 per cent. entitles the party to open biddings, not to prevail in future (a).

MR. STANLEY moved to open biddings upon a lot sold for 800*l.*; offering an advance of 80*l.*; exactly 10 per cent.

LORD CHANCELLOR [ELDON].—That rule of 10 per cent. [* 421] was not a wise rule to *establish. The consequence is, you never get more. I remember the time, when no such rule prevailed; and desire it to be observed, that in future there shall be no such rule (3).

Mr. Stanley then offering 100*l.* the order for opening the biddings

(1) *Ante*, *Wells v. Price*, vol. v. 398; *Winch v. James*, iv. 386. As to the extent to which the Court will go in providing for a subsequent marriage, see *post*, *Bathurst v. Murray*, vol. viii. 74; *Halsey v. Halsey*, ix. 47; *Long v. Long*, 2 Sim. & Stu. 119.

(2) *Ante*, *Stevens v. Savage*, vol. i. 154; and the note, 155.

(a) See as to opening biddings and the practice thereon, *Anonymous*, *ante*, 1 V. 453, note (a); *Chetham v. Grugeon*, *ante*, 5 V. 86, note (a); 1 Barbour, Ch. Pr. 537; 1 Sugden, Vend. & Purch. (6th Am. ed.) p. 86, [122], *et seq.*, and notes of Mr. Hammond.

The English practice of opening biddings on an advance seems not to have been adopted in several of the States of this country. See, *ante*, 1 V. 453, note (a), above cited; *Duncan v. Dodd*, 2 Paige, 100; *Collier v. Whipple*, 13 Wendell, 224.

(3) *White v. Wilson*, *post*, vol. xiv. 151. See the note, *ante*, vol. ii. 55.