

## IRELAND.

## APPEAL FROM THE COURT OF EXCHEQUER.

MEADE.—*Appellant.*EARL of BANDON.—*Respondent.*March 30,  
1814.

MORTGAGE.

TENDER of payment by mortgagor to agent of mortgagee, and refusal to accept, and 24 years thereafter suffered to elapse by mortgagee without demand of principal or interest. Payment of principal, and interest for whole time, decreed under the circumstances, and decree affirmed by House of Lords.

FRANCIS BERNARD, in 1731, became entitled to a mortgage, made in 1721, of the estates of Kippagh and Killany; by Meade the proprietor. In 1736 Francis Bernard went to England, where he resided till his death in 1783. Daniel Conolly, of Bandon, was Francis Bernard's agent and receiver in Ireland, and to him, in 1754, Meade made a tender of the principal and interest due on the mortgage, which Conolly refused to accept, alleging that he had no authority.

In 1759 Meade filed his bill in the Exchequer against Bernard and Conolly, stating the tender and refusal, and his having waited on Bernard in London, who refused payment, denying that Meade was the real mortgagor, and praying that Bernard and his agent might be compelled to accept of the sum due at the time of the tender, and that redemption

and reconveyance might be decreed. Conolly answered, and admitted a tender, and his refusal to accept, as having no authority; but Bernard did not answer, and there the matter stopped. The payment of interest was from that time discontinued. A peculiarity of disposition, arising from the death of his only son, was alleged as the reason for the averseness of Francis Bernard to attend to this or any other business.

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Francis Bernard having died in 1783, James Bernard, his representative, Respondent's father, in 1784 filed his bill in the Court of Exchequer, for account and payment of principal and interest due on the mortgage, or, in default thereof, for foreclosure and sale; and, on 8th May and 5th December, 1808, it was decreed accordingly, interest to be computed from 1759. From this decree an appeal was lodged.

There was some slight evidence of admissions by Appellant's father and grandfather, in or about 1778, of a debt due on their estate to F. Bernard.

Argued for Appellant,—1st, That acquiescence for 24 years raised a presumption that mortgage was discharged. 2d, That at any rate interest ought to cease from the time of tender, or from 1759.

Argued for Respondent,—1st, No such rule as they contended for; or suppose there were, it could only operate where there were no circumstances to account for the acquiescence; also, person to be affected was out of the jurisdiction. 2d, No evidence of tender, as one Defendant's answer could not be read against another; and, at any rate, tender to one who had no authority to receive was nothing.

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(Cited, *Leman v. Newnham*, 1 Ves. 51.—*Task v. White*, 3 Bro. C. C. 289.)

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*Hart and Courtney* for Appellant; *Romilly and Blake* for Respondent.

Judgment.

Judgment *affirmed*.

Agents for Appellant, RASHLEIGH and LEE.

Agents for Respondent, LIGHTFOOT and ROBSON.

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SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

GEORGE and PATRICK WALKER—*Appellants*.

GIBSON—*Respondent*.

April 20, 1814.

WRIT.—EX  
FACIE VITIA-  
TION.

NAME of one of the attesting witnesses in a deed appears to be written on an erasure, and the word *witness* subjoined is in a different hand-writing. This is an *ex facie* vitiation *in substantialibus*, though the witness deponed to the name being his writing, but recollecting nothing farther about the circumstances.

Deed.

THIS was an action of reduction to set aside a commission or deputation granted Dec. 23, 1791, by Lord Ballenden, then heretable usher and door-keeper of the Treasury and Exchequer, to the Appellants, of the office of deputy usher and door-keeper of the Exchequer Court, on the ground