

Enclosure.

THE REPORT OF THE ELL COMMISSION.

To the Editor of the Press.

SIR,—As the accountant referred to in the above-named report, in conjunction with the Registrar of the Supreme Court, I shall be glad if you will permit me to reply as briefly as possible to the conclusions of the Commission affecting the decisions arrived at by us in taking the accounts under orders of the Court in the cases of *Ell v. L. Harper*, and *Ell v. Harper and Hammer*. The Registrar, as a Government officer, is precluded from the right of defending himself through the medium of the Press; and, although I regarded myself as an officer of the Court appointed for a special purpose, my duties having been accomplished, I feel quite at liberty to take this course.

I would point out (1) that by an order of the Supreme Court, dated 27th June, 1884, we were authorised to take all accounts between the parties as from June, 1870; (2) that the sittings to take the accounts began on 11th July, 1884, and continued at intervals until finally closed in February, 1885; (3) that on 16th October, 1884, three months after first sitting, Mr. Ell's solicitor asked that a statement of accounts, agreed to by Mr. L. Harper in June, 1873, should be the starting-point for taking all stock accounts; (4) that the Registrar and Accountant decided they must take the accounts according to the order of the Court, as from June, 1870; (5) that on 17th October, 1884, Mr. Ell's solicitor applied to the Court for an order directing us to adopt June, 1873, as the starting-point in taking such stock accounts; this order was not granted; (6) that the Court granted an order on the 29th October, 1884, the purport and substance of which is quoted below.

The Commissioners state in their report: "1. That the Registrar and Accountant made a mistake as to the terms of the order of the Supreme Court of the 29th October, 1884, and should not have gone behind the settled account of June, 1873." To judge whether we made such a mistake I quote the essential part of this order of the Court, viz.: "If the Registrar and Accountant are satisfied that there was a settled account, or what was so intended, between the plaintiff of the one part and the defendant Leonard Harper and the late Philip Hammer, deceased, or either of them, covering all transactions between 1870 and 1873, such settled accounts are not to be disturbed." The italics are mine.

In support of this settled account to June, 1873, the only documentary evidence placed before us was one item contained in what is known as a progress statement of accounts rendered by Harper and Co. to Ell, in April, 1875, and is stated as follows—viz.: "1873, September 1, Bill drawn in settlement, June, 1873, £147 13s." This bill was not paid by Ell. The evidence given by Mr. L. Harper was to the effect that this was intended as a settlement of stock account; whilst the evidence of Mr. Ell was that "he did not remember any settlement of account with Mr. L. Harper in June, 1873;" but during the taking of accounts from the 11th July to date of order of Court, the 29th October, 1884, Mr. Ell's solicitor *proved and claimed credit for items amounting to over £1,000, including items for stock, dating from November, 1871, to 30th June, 1873, the period covered by the so-called settled account, all of which we allowed in favour of Ell*, whilst rejecting the settlement as not complying with the terms of the Order of Court as "covering all transactions between 1870 and 1873." This, I submit, is self-evident.

The Commissioners also state: "2. That the Registrar and Accountant were in error, in not accepting the receipt indorsed on the deed of mortgage, as evidence that the £250 had been paid by Mr. Ell."

The facts presented to us were, that in Mr. Ell's original accounts against Mr. L. Harper the payment of this item is absent—the practice between the parties being that all cash received or paid passed to the debit or credit respectively. This mortgage was discharged for £250 by indorsement in the usual legal form on the 6th September, 1875, and on the next day, the 7th September, 1875, application was made by Mr. Ell, through Harper and Co., to bring this land under the Land Transfer Act, and was, together with other land under this Act, subsequently mortgaged by Mr. Ell, through Harper and Co., for £800, which sum was placed to Mr. Ell's credit.

The discharge of this mortgage was first noticed by the Registrar on the 11th September, 1884, when sundry deeds were produced in evidence, and Mr. Ell's solicitor then claimed credit for it for the first time; but until these deeds were produced neither Mr. Ell nor his solicitor knew of such a claim existing, in fact, it was a surprise to both. Until then, I am satisfied that Mr. Ell had no intention of claiming this £250. I questioned him particularly as to how and when he paid this sum, but he was quite unable to give any evidence that he had paid it either by cheque, cash, or in any form whatsoever. At the same time another discharged mortgage for £1,000, paid by Harper and Co., was produced; this Mr. Ell "did not know had been paid off, as he left all his affairs in Mr. Harper's hands." This amount (£1,000) was also claimed by Ell's solicitor, but was subsequently abandoned. I would ask, is it reasonable to suppose that a man in Mr. Ell's position at this time could fail to remember that he had carried £250 in his pocket to pay off this mortgage, and keep no record of its payment?

The decision we arrived at was that, whilst recognising the discharged mortgage for £250, there was no evidence that any money had passed between the parties, the object of the discharge being to enable Ell to bring the land under the Land Transfer Act, to be dealt with in conjunction with other unsold land (previously mortgaged for £1,000 and released as above stated), titles for portions already sold having been applied for by purchasers on the same date—7th September, 1875, the balance being finally mortgaged as already stated.

I submit that I was not dealing with matters of law, but of fact; and, while it is a fact that the mortgage was discharged, it is also a fact that we found no trace of payment, and hence its disallowance, leaving the parties to appeal to the Court if necessary.

With all deference to the Commissioners, I respectfully submit that—without exceeding the bounds of modesty—the Registrar and myself were probably in a better position to judge the facts