Wood now shewed cause, and contended that the lease was void; 1st. By the stat. 21 Hen. 8, c. 13, s. 3, which avoids all leases of any manors, lands, tenements, or hereditaments to a spiritual person, which the defendant appears to be by the designation of himself in the lease itself, being therein styled Doctor in Divinity. 2dly. By the stat. 13 Eliz. c. 20, whereby all leases of any part of a benefice are absolutely avoided immediately upon the incumbent absenting himself therefrom for the space of four-score days in a year. Here the rector had discontinued his residence for a much longer period after the granting the lease in question. And it cannot be objected that there is a covenant in the lease that the rector shall not do any act to avoid it; for a covenant is no bar, whatever remedy may be had on it afterwards.

Erskine, in support of the rule, said in answer to the objection on the Stat. of Hen. 8, that there was no evidence that the defendant was a spiritual person, though called so in the lease granted by the lessor. And as to the Stat. of Eliz. that after the cases of *Doe* v. *Mears* (*a*)[1], and *Doe* v. *Barber* (*b*), it could not be contended that the lease in question might not be avoided on account of the non-residence of the rector; but still it was not competent to the rector himself to set it aside by shewing his own breach of duty.

[469] Lord Ellenborough C.J. The stat. 13 Eliz. c. 20, expressly enacts, "That no lease to be made of any benefice, &c. shall endure any longer than while the lessor shall be ordinarily resident and serving the cure of such benefice, without absence above fourscore days in any one year, but that every such lease immediately upon such absence shall cease and be void." It is plain therefore that the Legislature meant that the lease should be wholly cut down and done away by the non-residence of the rector. It was so considered in the case of *Doe* v. *Barber* even as against a stranger and wrong doer (*a*)[2]: therefore there is no ground for the distinction attempted to be taken between that case and the present. And I think the other ground of objection equally clear on the Stat. 21 H. 8. The defendant is described in the lease itself, produced by him, as a spiritual person.

Per Curiam. Rule discharged.

BILBIE *against* LUMLEY AND OTHERS. Monday, June 28th, 1802. Money paid by one with full knowledge (or the means of such knowledge in his hands) of all the circumstances cannot be recovered back again on account of such payment having been made under an ignorance of the law.

[Distinguished, *Hales* v. *Freeman*, 1819, 4 Moore, 21. Discussed, *Smith* v. *Alsop*, 1824, 13 Price, 825.]

This was an action for money had and received, and upon other common counts, which was brought by an underwriter upon a policy of insurance in order to recover back 100l. which he had paid upon the policy as for a loss by capture to the defendants the assured. The ground on which the action was endeavoured to be sustained was that the money was paid under a mistake, the defendants not having at the time of the insurance effected disclosed to the underwriter (the present plaintiff) a **[470]** material letter which had been before received by them relating to the time of sailing of the ship insured. It was not now denied that the letter was material to be disclosed; but the defence rested on now and at the trial was that before the loss on the policy was adjusted, and the money paid by the present plaintiff, all the papers had been laid before the underwriters, and amongst others the letter in question: and therefore it was contended at the trial before Rooke J. at York, that the money having been paid with full knowledge, or with full means of knowledge of all the circumstances, could not now be recovered back again. On the other hand it was insisted that it was sufficient to sustain the action that the money had been paid under a mistake of the law; the plaintiff not being apprized at the time of the payment that the concealment of the particular circumstance disclosed in the letter kept back was a defence to any action which might have been brought on the policy: and the learned Judge being of that opinion, the plaintiff obtained a verdict.

(*a*)[1] Cowp. 129. (*b*) 2 Term Rep. 749.

(*a*)[2] But such lessee may maintain trespass upon his mere possession against a wrong doer. *Graham* v. *Peat*, ante, 1 vol. 244.

A rule nisi was granted in the last term for setting aside the verdict and having a new trial; which was to have been supported now by Park for the defendants, and opposed by Wood for the plaintiff. But after the report was read, and the fact clearly ascertained that the material letter in question had been submitted to the examination of the underwriters before the adjustment,

Lord Ellenborough C.J. asked the plaintiff's counsel whether he could state any case where if a party paid money to another voluntarily with a full knowledge of all the facts of the case, he could recover it back again on account of his ignorance of the law? [No answer being given, his Lordship continued;] The case of *Chatfield* v. **[471]** *Paxton* (*a*) is the only one I ever heard of where Lord Kenyon at Nisi Prius intimated something of that sort. But when it was afterwards brought before this Court on a **[472]** motion for a new trial, there were some other circumstances of fact relied on; and it was so doubtful at last on what precise ground the case turned that it was not reported. Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance might not be carried. It

(*a*) That case came before this Court on a motion for a new trial in M. 39 Geo. 3. The circumstances were so special, and there was so much of doubt in it that it was not thought to be of any use to report it. The outline of it was this: A mercantile house in India (of which the defendant was a surviving partner residing here at the time) received a bill drawn by the plaintiff on another house in payment of a debt, which bill the defendant's house made their own by laches; but not apprising the plaintiff of this they sent him back the bill protested for non-payment, and drew upon him for the same amount in favour of a mercantile house in London (some of whom, amongst others the defendant, were also partners in the house in India). The plaintiff, ignorant of the laches of the house in India, accepted the new bill; but before payment he received some information of the laches; yet not such particular proof of it as would have enabled him to defend himself against the demand upon his acceptance in a Court (even if the house in India were to be considered the same as that in London). Therefore the plaintiff paid his acceptance and afterwards brought this action to recover the money back from the defendant as a partner in the house in India, and obtained a verdict under the direction of Lord Kenyon. Upon the motion for the new trial his Lordship and Ashhurst J. were clearly of opinion that the action was maintainable; considering as it seemed that the defendant's house in India had obtained the plaintiff's acceptance in the first instance by a fraudulent concealment of their laches, and that the plaintiff had not voluntarily and with a fair knowledge of his case submitted to pay it; but had paid it from the necessity of the thing and under a protest, that if on his arrival in India he afterwards found his suspicions confirmed he should call upon the house there to indemnify him. Ashhurst J. added that where a payment had been made not with full knowledge of the facts, but only under a blind suspicion of the case, and it was found to have been paid unjustly, the party might recover it back again. That here the plaintiff was under great uncertainty of the facts at the time he accepted the bill, and even if he knew them all before actual payment, yet that his knowledge would have come too late, and it would have been no answer to an action by the payees who were not parties to the transaction; but that his proper remedy was against those persons by whose misconduct he was placed in that situation. Grose J. said he had great difficulty in adopting the opinion of the other two Judges to the full extent of it; principally because he was not satisfied that the plaintiff had not a sufficient knowledge of the ground of his defence before payment of the bill, whatever he might have had when he accepted it: but as the verdict was with the honesty of the case he inclined against disturbing it; and the rather, because he doubted whether the house in India and that in London were to be considered as the same, so that the plaintiff could have resisted the payment of the bill to the latter, because one of their partners (the defendant) was also a partner in the other house, though he had no knowledge in fact of the laches. Lawrence J. also doubted on the former ground, as the plaintiff seemed to have been apprised before payment of the bill of the general outline of his defence; but as he was not then so conversant of the particular facts now appearing as to have been able to resist the demand then made on him if an action had been brought, but seemed to have had only a confused notion of them, expecting to be better informed when he arrived in India, he doubted how far the maxim volenti non fit injuria could be applied to him.

would be urged in almost every case. In *Lowrie* v. *Bourdieu* (*a*)[1], money paid under a mere mistake of the law (was endeavoured to be recovered back), and there Buller J. observed that ignorantia juris non excusat, &c.

Per Curiam. Rule absolute.

[473] ODDY *against* BOVILL. Tuesday, June 29th, 1802. Sentence of condemnation of a prize, taken by a French privateer and carried into Spain, by a French Court sitting there, (Spain being then a belligerent ally of France in the war against Great Britain) is valid; and such condemnation, proceeding on the ground of the property being enemy's and British, is conclusive in an action on a policy against the underwriter by the assured who had insured it as Danish, which in fact it was, Denmark being then neutral.

This was an action upon the case against the underwriter on a policy of insurance dated the 14th of February 1799, on a bottomry bond on the Danish shaw, "Frow Anna," upon a voyage at and from Penzance to Genoa, for 200l. at a premium of 20 guineas per cent. Plea the general issue. At the trial before Le Blanc J. at the sittings at Guildhall after last Hilary term, a verdict was found for the plaintiff for 200l. subject to the opinion of the Court upon the following case.

That the ship "Frow Anna" was in fact a Danish ship, but was in the course of her voyage from Penzance to Genoa captured by a French privateer, and taken into the port of Malaga in Spain. That the captor instituted proceedings against the ship before the consul of the French Republic residing at Malaga, who thereupon on the first of April 1799, at Malaga aforesaid, pronounced the following sentence.—"We Nicholas Maurit. Champre, Consul of the French Republic in the kingdom of Grenada in Spain, residing in Malaga, authorized by the laws of 3d Brumaire (25th October), and 8th Floreal (28th April), of the 4th year of the French Republic, to give sentence, whether the prizes brought into any port belonging to this consulship, by any vessel or privateer of the French Republic, be lawful or not."—The sentence then recapitulates the case and proceeds as follows: "That so many motives united leave no doubt of the confiscation of the said vessel being lawful, as well as on account of her being English property as on account of the offences against the ordinances. That the cargo is of English **[474]** growth and manufacture, and being besides proved English property by the piece of 13th page already referred to, is also condemned, being on board a vessel which is English property—We therefore declare the vessel called 'Frow Anna,' Captain A. B., taken by the French privateer 'Le Zenodore,' Captain H. P., a good prize, with her masts, &c. to the profit of the proprietors of the 'Zenodore' and her crew, and others interested in her, together with the goods, without any exception, that compose her cargo; and order all guardians and trustees to make the delivery of the same up to them; by which delivery we declare the said guardians and trustees duly and lawfully discharged of their trust. And we permit to the said proprietors of and persons interested in the 'Zenodore,' or to those that have the power to procure the sales of the ship and cargo in the Chancery of the consulship of the French Republic in this port, charging them however to deposit the value in the said Chancery, or in any other public treasury in which they may be authorised so to do, till the allowed time of appeal be expired, or in case of appeal until the definitive sentence, which, if it should be against them, they are to pay all the rights and expences which might be done in consequence of the said sale, the lot of livre to the invalids, and other duties; also the law expences, and the expences of the present sentence of condemnation, which will be executed notwithstanding the rights of appeal; and intimated to all whom it may concern.—Done in the Consulary House, and sealed with the national seal of this consulship of Malaga, the 11th of Germinal, in the 5th year of the French Republic (1st April 1797), one and indivisible." "Signed Champre Consul." That at the time of the capture **[475]** and of the pronouncing of the aforesaid sentence the French and Spaniards were allies at war with this country, and Denmark was neutral. The question for the opinion of the Court was, whether the said sentence (*a*)[2] were

(*a*)[1] Dougl. 467.

(*a*)[2] Either party were to have liberty to refer if necessary to the sentence at large.