

in the land for the use of their road. By the terms of the statute, payment of the damages awarded to the owner, or, on his refusal of the same, to the state treasurer, was required before such entry and taking (G. L., c. 160, s. 22); and the defendants, having elected to comply with the requirements of the statute and enter upon the land, cannot recover back the damages so paid or any portion of them, and the plaintiffs are entitled to the sum awarded, notwithstanding the verdict. But the verdict being for a less sum than the damages awarded by the commissioners, the defendants are entitled to costs. Gen. Laws, c. 160, s. 17, provides that on appeal from the assessment of damages by the railroad commissioners, the same proceedings shall be had as on appeal from an award of damages by the county commissioners, and c. 69, s. 13, Gen. Laws, provides that if, upon an assessment of damages by a jury, on appeal from the award of the county commissioners, the land-owner recovers a greater sum, he shall be allowed his costs; otherwise, he shall pay costs. The plaintiffs' exceptions are overruled, and there must be

*Judgment for the defendants for costs.*

ALLEN, J., did not sit; the others concurred.

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DREW v. MORRILL.

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A mortgagor in possession cannot defeat the mortgage by acquiring a tax title of the mortgaged premises; and a tax deed taken by the wife of a mortgagor at his request, and held for his benefit, is invalid as against the mortgagee.

TRESPASS, *qu. cl.*, for breaking and entering upon a tract of land in Concord. The plaintiff's title was derived from a sale of the land for the taxes for the year 1876, assessed thereon against her husband, who was then in possession of the premises under a deed from the defendant to him dated July 10, 1873. The entry of the defendant complained of was under a mortgage of the same date from the plaintiff's husband given to secure the purchase-money for the premises. The court found that the land was conveyed to and the tax deed taken by the plaintiff, at the request of her husband, and held by her for his benefit; and that the plaintiff and her husband understood that she would take a conveyance of the land in that way at the time of its sale for taxes, and that she took the conveyance acting on that understanding. It was therefore found that the plaintiff could not recover on her title against the defendant, and the plaintiff excepted.

*Ray & Walker*, for the plaintiff.

*J. Y. Mugridge and E. H. Woodman*, for the defendant.

CLARK, J. It is the duty of a mortgagor remaining in possession of the land to pay the taxes assessed upon it; and a purchase made by one whose duty it was to pay the tax operates as payment only, and confers no title as against the party to whom he owed the duty of payment. By the purchase of the tax title at the request and for the benefit of her husband, the mortgagor, the plaintiff acquired no title as against the defendant, the mortgagee. *Kezer v. Clifford*, 59 N. H. 208.

*Exceptions overruled.*

ALLEN, J., did not sit; the others concurred.

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LORD v. LOCKE.

One who is not a party to a judgment, or against whom it cannot be enforced, is not permitted to use it for his own benefit, or to the disadvantage of his adversary.

The record of the proceedings before the justices on an application to take the poor debtor's oath is not admissible in a suit involving the validity of a prior sale of personal property by the debtor, between the vendee who was not a party to the poor debtor proceedings and an attaching creditor.

It is no objection to the validity of an alias *capias* execution that the debtor has given bond to take the poor debtor's oath within a year.

TRESPASS, for taking four cows. Facts found by a referee. February 24, 1881, the Merchants' National Bank of Lowell, Mass., recovered a judgment against Charles Lord, the plaintiff's father. Execution issued returnable on the first Tuesday of April, 1881. The execution, with an affidavit on the back, that the debtor concealed his property so that no attachment or levy could be made, was placed in the hands of the defendant, Locke, a deputy sheriff, who arrested the debtor thereon March 26. On the same day he was released upon giving bond as provided in c. 240 of Gen. Laws. March 7, 1882, he applied to justices appointed by the court to be admitted to take the poor debtor's oath. The bank resisted his application, upon the ground, among others, that his conveyances of his real and personal property were fraudulent as to creditors; but the justices admitted him to take the oath, and he took it March 24, 1882.

December 26, 1878, Lord conveyed to the plaintiff his farm,