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Harpending Vs. Reformed Protestant Church of New York

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Decided On : 1842

Appeal No. : 41 U.S. 455

Appellant : Harpending

Respondent : Reformed Protestant Church of New York

Judgement :

Harpending v. Reformed Protestant Church of New York - 41 U.S. 455 (1842)
U.S. Supreme Court Harpending v. Reformed Protestant Church of New York, 41 U.S. 16 Pet. 455 455 (1842)

Harpending v. Reformed Protestant Church of New York

41 U.S. (16 Pet.) 455

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

A bill was filed in the Circuit Court of the Southern District of New York by the heirs of John Haberdinck, claiming certain real estate in the City of New York and an

account of the rents and profits thereof, the estate having been devised in 1696, to the Ministers, Elders, and Deacons of the Reformed Protestant Dutch Church of the City of New York. To this bill the respondents, among other matters, pleaded that they bad been in actual adverse possession of the premises for forty years next before the filing of the bill.

If the complainant by his bill, or the respondent by his plea, sets forth facts from which it appears that the complainant, by the statutes of the state, has no standing in court, and for the sake of repose and the common good of society is not permitted to sue his adversary, it is the rule of the court not to proceed further, and dismiss the bill.

In pleading the statute of limitations to a bill in chancery, it is not necessary that there shall be an express reference to the statute of the state in which the proceeding is instituted. The court is judicially bound to take notice of the statutes of limitations when the facts are stated and relied on as a bar to further proceedings, if they are found sufficient.

One tenant in common may hold adversely to and bar his co-tenant.

After the elapse of twenty years from the commencement of adverse possession of the property claimed, the defendants had a title as undoubted as if they had produced a deed in fee simple from the true owners of that date, and all inquiry into their title or its incidents was effectually cut off.

The Supreme Court of the United States is bound to conform to the decisions of the state courts in relation to the construction of the statute of limitations of the state in which the controversy has arisen. Such is the settled doctrine of the supreme court. Cited, *Green v. Neal,* 6 Pet. 291.

No distinction is made by the courts of the State of New York between a religious corporation claiming to hold under the statute of limitations of the state in regard to capacity to hold by force of the statute; therefore none can be taken by the Supreme Court of the United States.

The statute of New York is in substance the same as that of 21 Jac. 1. That such a possession as is set forth in the plea in this case is protected by the statute has been the settled doctrine of the courts of that state for more than thirty years, if it ever were doubted.

The second part of the plea of the defendants averred that all the parts of the lands sold had been conveyed and the moneys received by the defendants more than forty years before the plea was filed. This is deemed a conclusive bar. The bill seeks the money, and six years barred the relief, this being a concurrent remedy with the action at law.

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The defendants had disclaimed the ownership of certain lots which were described in the bill, and of which they were charged with being owners. The circuit court dismissed the bill as to these lots. *Held* that this was proper. There was no probable cause for retaining this part of the bill, to obtain an account from the respondents. Obviously no claim exists that can be made available for the complainants in regard to this portion of the property.

On 25 March 1839, the appellants filed a bill in the Circuit Court of the United States for the Southern District of New York (they being citizens of other states than the State of New York) stating that prior to September, 1696, John H. Haberdinck, of the City of New York, with four others, was seized in fee of the "Shoemaker's Fields or lands," a tract of about sixteen acres in the City of New York, and that in the same year, partition of the same was made and Haberdinck became seized in severalty of divers parcels of the land described in the bill. Haberdinck died seized of the land in January 1722, leaving a widow, who died in 1723, and John Haberdinck, Junior, of New York, was his only heir, and inherited his lands. The bill stated that the complainants were the heirs of John Haberdinck, Junior, their names having been varied to Haberding. It stated that they are seized, with Peter Haberding, a citizen of New York, of these lands as heirs as aforesaid, and that no sale or devise of the lands has been made by them or by

any of their ancestors.

The bill stated that John H. Haberdinck made leases of part of the lands for ninety-nine or more years, and some of the leases so granted did not expire until after 1829. The Dutch Church had, for some time past, had possession of the lands allotted to John H. Haberdinck by the partition, and claimed that they took such possession in virtue of some will or devise of John H. Haberdinck to them. They also obtained possession of the undivided parcel, and alleged title to some shares of it, by deeds from the other tenants in common, and had demised parts of the same &c.;

The bill alleged that the church was a religious corporation in the City of New York, incorporated under the laws of New York. The complainants had applied to the church for a statement of

the title under which they claimed the property, and for a list of papers, and the inspection of their rent roll, and an account of the rents and profits. In March, 1822, the bill alleged that the defendants returned to the chancellor of New York an inventory, in which they set forth that these lands were held by them as

"sundry lots devised to the church by John Haberdinck, called the Shoemaker's land, as mentioned in a former inventory, situated in the second and third wards of the City of New York,"

and the defendants alleged the said will was valid.

The parts of the will set out in the bill of the complainants relating to the property claimed by the complainants were as follows:

"Item. I, the said John Haberdinck, does hereby give, devise and bequeath unto the minister, elders and deacons of the Reformed Protestant Dutch Church of the City of New York and their successors forever all my [the testator's] right, title and interest, and property in and to an equal fifth part, share and proportion of all that tract or parcel of land situate, lying, and being upon Manhattan Island within the

City of New York, called or known by the name of Shoemaker's Field or land, on the north side of Maiden Lane or path, &c.;, the which tract or parcel of land contains, by estimation, sixteen acres."

The will then described the different lots according to the partition, and proceeded,

"All of which several and respective lots, pieces and parcels of land, I, the said testator, do hereby give, devise, and bequeath unto the said minister, elders and deacons of the Reformed Protestant Dutch Church of the City of New York, and to their lawful successors forever, with all and singular the buildings, messuages, edifices, improvements, emoluments, profits, benefits, reversions, advantages, hereditaments and appurtenances thereunto belonging, or in any wise appertaining or reputed or esteemed as part and belonging to the same, to have and to hold all the aforesaid several and respective lots, pieces, and parcels and land, with the several and respective premises and appurtenances, unto the said minister, elders and deacons of the Reformed Protestant Dutch Church of the City of New York, and their lawful successors, to the sole and only proper use, benefit and behoof of the said minister, elders and deacons of the Reformed Protestant Dutch Church of the City of New York, and their lawful successors forever,

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to be received and employed by the said minister, elders. and deacons of the Reformed Protestant Dutch Church of the City of New York immediately after my decease and the decease of my wife Mayken Haberdinck, and only to the proper use, benefit and behoof, and for the payment and satisfaction of the yearly stipend, salary, or maintenance of the respective minister or ministers, which from time to time, and at all times hereafter shall be duly and legally called to the ministry of the said church, and to no other use or uses whatsoever. And I, the said testator, do hereby further order and direct that the sole management, direction, administration and government of the same after my decease and the decease of my wife, Mayken Haberdinck, shall only be and remain in the hands, care, management, direction and administration and government of the elders of the said church for the time being, or whom they shall nominate, constitute, and

appoint to act in their stated or place and without being subject or bound to render any account of the same, but only to the minister or ministers, elders, and deacons of the said Reformed Protestant Dutch Church of the City of New York for the time being. Provided always that it shall not be lawful nor in the power of the said minister, elders, and deacons of the Reformed Protestant Dutch Church of the City of New York, nor their successors, nor the said elders or managers for the time being, nor in the power of any other person or persons whatsoever forever hereafter to make sale, dispose, or alienate any part of the said lands and premises, nor any of the profits, benefits, revenues, or advantages accruing or arising out of the same to any use or uses whatsoever but that the same shall be forever and remain to the only proper use, benefit and behoof as is above recited, declared and expressed."

The complainants charged that the will and the devise to the church was, at the date of the will, at the testator's death, and is at this time wholly and absolutely void, illegal and inoperative at law.

"The church could not and did not acquire any right or estate under the will, and the possession of the premises was in subordination to the title of the complainants and their ancestors. The church took possession of five of the lots that were on Broadway, although only a part of two were devised to them."

The bill further stated that the church was incorporated on 11

May 1696, then having a church in Garden Street and certain tracts of ground, and were authorized "to have, take, acquire and purchase" lands, &c.;, and not exceeding the yearly value of two hundred pounds, New York currency, equal to $500. That the property held by them was considerable, and had ever since been actually, and for twenty years past has been worth, at least $10,000. The yearly value of the lands devised by Haberdinck had ever since greatly exceeded the amount which the church was, from time to time, by law authorize to hold; from 1780 to 1800, the yearly value thereof was $10,000; from 1800 to 1820, at least

$20,000; and to this time, at least $30,000. In order to keep down the "annual income," the church had given leases for long terms at a low rent, and then sold such terms, for large sums, and sued the money to buy other lands for other purposes.

The church had always held those lots under claim of title subordinate to the title of the complainants and their ancestor; it was always incapable in law of acquiring or holding a valid title thereto by adverse possession, and was, at the time of Haberdinck's death, incapable in law of acquiring and holding the lands by devise. If it should appear that the lands were actually devised to the church by the will, yet such devise would appear to have been made on the "express condition" that the lands were to be held by the church for the payment and satisfying the yearly stipend, salary, or maintenance of the respective minister or ministers which should be from time to time duly and lawfully called to the ministry of the said church, and to no other use whatever, and on the express condition that it should not be lawful for the ministers, elders, and deacons to sell or dispose of any part of the property or to apply any of the profits, revenue, &c.;, to any use whatever other than those mentioned. At the time of the making of his will by Haberdinck, the only church was in Garden Street; they had since built two others and abandoned that as a place of worship. The income of the church from these lands had annually, for fifty years, greatly exceeded the yearly salaries paid or which could be paid to their ministers, and they had used the large surplus annually for other purposes, &c.;

The bill prays for a discovery whether the church held under the will of Haberdinck, and if so a full account of the same and of all matters relating to the property, and for an account, &c.;

The defendants, after various exceptions to the bill of the complainants and to the relief sought in the same and the denial of many of the allegations in the bill, and disclaiming the ownership of certain lots described in the bill and in the answer filed, said:

"These defendants do plead in bar, and by was of plea say that for all the time commencing forty years prior to the filing of the bill of complaint, namely, commencing on 25 March, in the year of our Lord 1799, until and at the time of the filing of this plea, these defendants were and have been, and are, by themselves and tenants holding under them, in the sole and exclusive possession of all and singular the lands in the bill of complaint mentioned (excepting the lands above described as hereinafter disclaimed), during all which time of possession, all and singular the said lands have been improve by buildings, and enclosed with a substantial enclosure, excepting that the land twenty-five feet in width from John Street, to Fair Street, now Fulton Street, between the side of lots 84 and 86, and a continuation thereof, having been during all that time enjoyed as a public street for access to the lands upon the same, and as a public street then, ever since, and now used by all good citizens of this state as a public street and highway, without rents, issues or profits thence accruing, and excepting a piece of land twenty-five feet in width, extending from the rear of lot 62, in the said bill mentioned, seventy-five feet along the rear of lots 41, 42 and 44, and excepting the two pieces of land, the one extending along the southwesterly side of lot No. 68, and the rears of lots 77, 78, 79 and 80; the other extending along the northeasterly side of lot 66, and the rears of lots 32, 33, 34 and 35, from Nassau Street to the rear of the said lots, and during all that time these defendants have, by themselves and their tenants holding under them, actually occupied and possessed all and singular the said lands, claiming and enjoying the same during all the time aforesaid as being seized thereof in their demesne as of fee, in severalty, and in their own sole and exclusive right, as the sole and exclusive owners thereof, in their own right, in fee simple, and to their own sole and

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exclusive use, and not otherwise, and during all that time these defendants have been in the sole and exclusive receipt and enjoyment of the rents, issues, profits, avails and proceeds thereof, to the sole and exclusive use of the said corporation, claiming the right to receive and enjoy the same to their own use, and not otherwise. "

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CATRON, JUSTICE, delivered the opinion of the Court.

The respondents rested their defense below on a plea in bar that they had been in actual adverse possession of the premises, in regard to which they are asked to account and make discovery for forty years next before filing of the bill. The plea was sustained, and from this decree there was an appeal prosecuted to this Court by the complainants.

1. They insist the plea is bad in form, and

2. Insufficient in substance.

1. The first objection to the form of the plea is that it does not rely on twenty years' adverse possession, but on forty years, twenty years being the time of holding adversely to constitute a bar by the statute of New York. In this respect there is no technical rule observed by the courts of chancery. If the complainant, by his bill, or the respondent, by his plea, sets forth the facts from which it appears that the complainant, by the statutes of the state, has no standing in court, and for the sake of repose and the common good of society is not permitted to sue his adversary, it is the rule of the court not to proceed further, and dismiss the bill. Had the complainants set out the fact of forty years, adverse possession, then a demurrer interposing the bar would have been the proper defense, countervailing circumstances aside. Such was the course taken in *Humbert v. Trinity Church,* 24 Wend. 587, and which was in accordance with the established practice of courts of chancery.

2. It is insisted that the act of limitations is not relied on by express

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reference to the statute of New York. We think it was unnecessary to rely in terms on the statute. It was more convenient not to do so. The bill seeks discoveries, the right to have which twenty years' adverse possession could only bar. It also seeks an account of the proceeds of sales of parts of the estate, and an account of the

rents and profits of other parts, assuming the respondents to be trustees for the complainants. To this aspect of the bill six years forms the bar to a decree. The court is judicially bound to take notice of the statutes when the facts are stated and relied on as a bar to further proceeding if they are found sufficient. So the chancellor of New York held in *Bogardus v. Trinity Church,* 4 Paige 197, and we think correctly.

3. In regard to the substance of the plea, it is insisted for respondents that the answer does not cover and support the plea by the denial of facts alleged by the bill which, if true, obviate the bar. That, taking the facts alleged as established by admission, then the respondents were express trustees for the complainants, held possession for them, and are compellable to account regardless of the lapse of time. To test the sufficiency of the answer, we must take every allegation of the bill as true which is not denied by the answer, and then inquire whether, those facts being admitted, the plea is sufficient to bar the claim to relief set up by the bill. 4 Paige 197; Mitf. 300; *Plunket v. Penson,* 2 Atk. 51; 15 Ves. 377.

The complainants charge certain circumstances which, if true, preclude a bar, without admitting the existence of the bar, yet alleging facts which obviously stand in the way of relief unless the circumstances be true. They have the undoubted right to call on the defendants to furnish by their answer the evidence that they did hold the church estate as express trustees and under and for the respondents. These facts would invalidate the plea if admitted, and the defendants must answer to all the matters which are specially alleged as evidence of these facts. Nor would the denial in the plea serve the purposes of the complainants, for on setting it down for argument, its truth must be admitted. Story's Eq.Plead. 515, 672-673; Beames' Pleas in equity 33-34.

Have the respondents furnished the evidence claimed from

them, or, have they repelled the circumstances by a sufficient denial of their existence? If unanswered, the circumstances must be taken as true for the

purposes of resisting the plea (as already stated), to the extent that they stand unanswered. The bill alleges that John Haberdinck, in 1696, jointly with four others, was seized in fee simple of a tract of land called the Shoemaker's Field, lying on the northeast side of Maiden Lane in the City of New York. In 1696, the parties divided the premises, in part, into lots, and the other tenants in common conveyed to John Haberdinck, in severalty, his one-fifth part of the lands divided, which are severally described by lots.

That previous to 1723, Haberdinck died, leaving no children. John Haberdinck, Junior, was the lawful heir of John, the elder, and the complainants are descendants and heirs of John the younger.

That no sale or devise of the premises has ever been made by any of the ancestors of complainants through whom they claim, and that they are entitled and seized as heirs-at-law and by right of succession.

That the Reformed Dutch Church of the City of New York, by its ministers, &c.;, had been possession of the premises held in severalty by John Haberdinck, and claimed to have taken possession under some will or devise of John Haberdinck, whereby the premises were devised to them.

The first circumstance stated in evidence of the bar is that John Haberdinck, in his lifetime, had let the premises or some part thereof to lease for ninety-nine years, and that the lease expired in 1819. When the bill was filed does not appear by the record. We take it, within less than twenty years after 1819. To whom the term of ninety-nine years had been granted the bill does not in this part of it allege.

The defendants deny all knowledge of the existence of any such lease except for three lots to William Huddleston dated in 1723 for the term of seventy years from the first of May of that year, and this lease is not thought to be genuine. This answer we deem sufficient.

It is next alleged that the ministers, &c.;, of the church are a religious corporation, duly incorporated and located in the City of New York, and as such obtained by purchase from some of the

tenants in common with John Haberdinck the elder or from someone claiming under them, parts of the Shoemaker's Field not partitioned in 1723. This allegation needed no answer in support of the plea. One tenant in common may well hold adversely to and bar his co-tenant.

The complainants also allege they applied to the corporation for an inspection of title deeds; an account of sales; of rents and profits; for possession of the lands, and a partition of the undivided part; which had been refused. If barred of the right to the land, so were the complainants of the relief sought by their request to the corporation. Nor has the contrary been assumed. As to title deeds, none but the lease for ninety-nine years could have aided the complainants, and the distinct answer that none such existed covers this allegation.

As a supervening circumstance, complainants allege that respondents, in 1822, acknowledged they entered and held under the will of Haberdinck the elder by an account and inventory of their property rendered to the chancellor of New York pursuant to a statute of that state.

The will is then set out, dated 1722, by which the property was devised to the ministers, elders, &c.;, of the church, and their successors forever, with its probate, and the devises therein to the religious corporation are alleged to be illegal and void, that no title was taken under the will, and that the possession was held in subordination to the right and title of the heirs-at-law. It is reiterated that the corporation entered as assignees, under leases for long terms of years, made by John Haberdinck in his lifetime, and which have lately expired, or under some other title derived from John Haberdinck and subordinate to the title of the heirs-at-law, but particularly under a demise by Haberdinck to the ministers, deacons, &c.;, or to some other person which was assigned to them and which expired between the years 1810 and 1822. And under some title, subordinate to that of the heirs-at-law, the respondents have ever claimed, held, and enjoyed the premises. That so late as the year 1810, they admitted, by an inventory returned to the chancellor, that they held under a demise to the corporation by John Haberdinck. The charter

granted by the King in 1696 is substantially set forth, and it is averred the annual profits of the premises devised exceed two hundred pounds, or $500, the extent to which the church was permitted by law to receive profits; that from 1780 to 1800, the yearly value of the premises was $10,000; from 1800 to 1820, $20,000; and from that time to the date of the filing of the bill, of the yearly value of $30,000.

That to keep down the rents, long leases have been given at low rates, and then the leases have been sold out and other lands purchased with the proceeds of the sales, and other investments made. That a religious corporation, which is by law incapable of receiving or taking lands by devise, cannot hold adverse possession of such lands upon which they have entered and always claimed under such devise. This being the case of the respondents, the complainants were entitled, as heirs-at-law, to rents and profits and the proceeds of sales, at least after deducting therefrom a support for the ministers of said church, which the income greatly exceeded, and to which extent and no other, by the terms of the will, could the revenues and income of the devised premises be applied. And a discovery and account is asked of the surplus, if no more.

As to parts of the premises the defendants disclaim title, and as to other parts they plead they had sold and conveyed in fee simple, more than forty years before the filing of the bill, and the alienated lands had ever since been held and enjoyed under the conveyances adversely to the claim of the complainants.

To such parts of the foregoing allegations as charge in any form a holding in subordination to the title of complainants as tenants in common or by demises or otherwise, the respondents answer in various forms that they claim to hold for themselves in severalty and in fee simple, and in hostility to the claim set up in the bill, for forty years next before it was filed; that they never acknowledged any title in the complainants, and that the expression in the return to the chancellor that they held by demise under John Haberdinck was a clerical error.

Respondents neither admit nor deny that they held under the will of John Haberdinck or that they have received revenues and profits as charged. These facts are treated as immaterial.

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Not being answered as repelling circumstances, they must be considered as true.

The plea avers that for forty years previous to the time of filing the bill -- that is, from 1799 and up to the date of the plea -- the defendants had been, by themselves and their tenants, in the sole and exclusive possession of all and singular the lands in the bill mentioned (except those disclaimed), during all of which time all and singular the said lands have been improved by buildings and enclosed with substantial enclosures, and actually occupied by themselves and their tenants, claiming and enjoying the same as being seized thereof in their demesne as of fee, in severalty, and in their own sole and exclusive right, and as the exclusive and sole owners thereof, and to their own sole and exclusive use, and not otherwise, and that respondents have in like manner been in the receipt of the rents and profits. As to that part of the premises alleged to have been sold, respondents plead that more than forty years before the filing of the bill, thus being in possession in their own right and severalty and claiming the right to sell and convey in fee simple absolute, did grant and convey the same in fee simple absolute, for a valuable consideration to them paid, and which the corporation applied to its own use, claiming the right to do so without any accountability to any person whatever, and the said premises have ever since been held, occupied, and enjoyed under said conveyances adversely to the claim of the complainants in their bill set forth.

Stripped of the circumstances met by the answer, and the case presented to us for decision is simple.

The complainants claim under Haberdinck, the elder, as heirs-at-law. The respondents entered under the will of Haberdinck, and have for more than a century claimed under it. The complainants allege the will is void; the respondents

disregard the allegation as immaterial and raise no question on its validity.

They rely on forty years' adverse possession, claiming to hold for themselves in fee simple and in severalty. To cover the possession, no paper title is invoked, substantial enclosure and actual occupancy for forty years are relied on in substitution of a valid paper title.

The plea having been set down for argument, the facts it

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assumes must be taken as true, and we are called on to pronounce the law on the facts.

The defense set up is independent of the complainants' case and purely legal in its character insofar as the bar is sought to protect the possession of the lands, supposing this to be the relief prayed. This is not the case, however; the bill seeks 1. an account of the rents and profits; 2. an account of the proceeds of such parts of the lands as the corporation has sold; 3. the production of the title papers and rent rolls, appertaining to the estate; and 4. a discovery of the amount of the proceeds by rents and sales, through a series of years, treating respondents as trustees for the complainants.

As these are incidents to the title if it is confirmed in fee simple to the respondents by force of the statute of limitations of the State of New York and the complainants are barred of their recovery at law of the estate, the incidents of rents, proceeds of sales, and discovery of title papers follow the title, aside from the shorter bar of six years in regard to the money demands. At the end of twenty years from 1799, when the adverse possession commenced, if the statute of limitations applied to the case made by the plea, the defendants had a title as undoubted as if they had procured a deed in fee simple from the true owner of that date, and all inquiry into their title or its incidents was as effectually cut off.

Complainants contend that in 1722, a devise to a corporation for the purpose of maintaining religion was void where the income from the property bequeathed

exceeded two hundred pounds, being contrary to the statute of wills of Henry VIII; therefore the will of John Haberdinck was inoperative, and the premises descended to the heir-at-law. Nor could the corporation take by deed more than by will. Having no capacity to take by will or deed, and the operation of the act of limitations being a confirmation of a supposed paper title from someone of the whole premises, the corporation in like manner wanted capacity to take by force of the act of limitations, which would be in equal violation of the statute of Henry VIII.

On this presumption the bill is obviously founded, and it is in fact the only question in the cause.

Respondents insist, on the other hand, 1. that the devise was to a charity, and therefore not embraced by the statute of Henry VIII; 2. that bodies corporate are excluded from the statute of Henry VIII by the statutes of the State of New York; 3. that there is no allegation in the bill that the income of the devised premises was worth more than two hundred pounds in 1722, when the will took effect, and if the will was valid then, it continued to be valid afterwards according to 2 Inst. 722; 4. that we are bound to presume, after the lapse of more then a century, the existence of a colonial statute authorizing the bequest, and which has been destroyed by time and the accidents of the revolution in the government.

These considerations are mere incidents in the controversy as it is presented to us; none of them seems to have been conclusively settled by the decisions of the state courts of New York, and therefore we express no opinion upon them. It may be true that in 1722, the corporation of the Protestant Dutch Church could not take, and yet in 1799, it was enabled by the statutes of New York to take and hold the premises. If so, time could confirm the title because of the newly created capacity.

Be this as it may, we are bound to conform to the decisions of the state courts of New York in the construction of their acts of limitation. Such is the settled doctrine of this Court. *Green v. Neal,* 6 Pet. 291. The Chancellor of New York held, in

Bogardus v. Trinity Church, 4 Paige 178, that the corporation could make defense, and that it did take title by force of the act of limitations. The Court of Errors held the same in *Humbert v. Trinity Church,* 24 Wend. 587. As no distinction is made by the state courts of New York between a religious corporation and an individual in regard to capacity to hold by force of the statute, none can be taken by this Court.

It is only left, then, to consider whether a naked possession is protected by the statute, to the extent of the substantial and actual enclosures, for all the time necessary to form the bar. The statute of New York is in substance the same as that of the 21 Jac. I; that such a possession as is set forth by the plea is protected by the statute has been the settled doctrine of the courts of that state for more than thirty years, if it ever was doubted.

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We need only refer to *Jackson v. Shoemaker,* 2 Johns. 234; *Jackson v. Wheat,* 18 *id.* 44; *Jackson v. Woodruff,* 1 Cow. 285; and *Jackson v. Oltz,* 8 Wend. 440.

These cases were at law, and the statute is equally binding on the courts of chancery, where the complainants seek to have an account of rents and profits accruing out of a legal estate. This is also settled by the state courts of New York in 4 Paige 179, by the chancellor, and in 24 Wend. 587, above cited, by the Court of Errors. We therefore concur with the circuit court that the first part of the plea must be sustained for so much as it covers.

The second part of the plea, averring that all the parts of the lands sold had been conveyed, and the moneys received by the corporation more than forty years before the plea was filed, we deem a conclusive bar. The bill seeks the money, and six years barred relief, this being a concurrent remedy with an action at law.

For all the lots disclaimed by the answer and plea, the bill was properly dismissed; there was no probable cause for retaining is to obtain an account from the respondents; obviously no claim exists that can be made available for complainants in regard to this portion of the property. Mitf.Plead. 319.

We order the decree below to be affirmed.

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