

Van Rensselaer Vs. Kearney

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Appellant : Van Rensselaer

Respondent : Kearney

Judgement :

Van Rensselaer v. Kearney - 52 U.S. 297 (1850)

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Van Rensselaer v. Kearney

52 U.S. (11 How.) 297

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

In 1786, the Legislature of New York passed a law declaring that "all estates tail shall be, and hereby are, abolished," and if any person should thereafter become seized in fee tail of any lands, tenements, or hereditaments by virtue of any devise

&c.;, he should be deemed to have become seized in fee simple absolute.

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This included an estate tail in remainder as well as one in possession.

The courts in New York have so decided, and this Court adopts their construction.

The remainderman dying during the lifetime of the life tenant, the latter, being the father, inherited from the son a fee simple absolute.

Whilst the remainderman was yet alive, the life tenant sold the property and conveyed it to the vendee by a deed which, according to its true construction, affirmed the existence of an estate in fee simple in itself. The reasons for this construction stated.

Those claiming under him are estopped by this deed. The doctrine of estoppel explained.

This was a bill filed by the appellant, Jeremiah Van Rensselaer, against John Watts originally, and continued against his trustees and executors, praying for an account of the rents of certain property, and for the surrender of the leases, title deeds &c.;

In order to see at a glance the derivation of the title, the following table is referred to:

image:a

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On the 25 May, 1782, John Van Rensselaer was seized of a large body of land, about thirty-four thousand acres, a part of which had been leased on permanent ground rents and a part leased for life or for years. The residue was owned by him in fee simple. On that day he made and published his last will and testament, by

which he devised Claverack Manor to trustees during the life of John J. Van Rensselaer, his grandson, with the intent to create an estate tail, the rents and profits to the use of John J. Van Rensselaer during his lifetime and the remainder over to the issue male of the said John, and in case of failure of such issue, then to the issue male of the other sons of the testator. Provision was then made for raising portions for female issue.

On 12 July, 1782, a law was passed in New York abolishing entails, and on 29 July, 1782, the testator added a codicil to his will, alluding to the law.

In 1783, the testator died, and John J. Van Rensselaer, the devisee, entered into possession of the estate.

On 23 February, 1786, the Legislature of New York passed an act 3 R.S.N.Y. 1st ed., App. 48; 1 R.L. 1813, p. 52, declaring

"That all estates tail shall be, and hereby are, abolished, and that, in all cases where any person or persons now is, or, if the act hereinafter mentioned [referring to the act passed on 12 July, 1782] had not been passed, would now be seized in fee tail of any lands, tenements, or hereditaments, such person and persons shall be deemed to be seized of the same in fee simple absolute, and further that in all cases where any person or persons would, if the said act and this present act had not been passed, at any time hereafter become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to become seized thereof in fee simple absolute."

In 1791, John was born, who was the first-born son of the devisee. It may as well be mentioned here that he died in 1813, leaving his father surviving him. After John there were born other children, viz., Jeremiah, who was the complainant below and appellant here, Catherine, who intermarried with one Visscher, Glen, and Cornelius.

In 1794, the condition of the estate was this. Much the larger proportion of it was held under leases, which had been made to different persons at different times, and the residue was held by John J. Van Rensselaer. The leases were, some of them, executed by Hendrick Van Rensselaer and John Van

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Rensselaer, the ancestors of the said John J.; and some executed by John J. Van Rensselaer himself. These leases for the most part created perpetual ground rents, and those which did not create perpetual ground rents were for the lives of the lessees. Two mortgages upon the property had also been given by John J. Van Rensselaer to Philip Schuyler, for three thousand one hundred pounds each.

This being the state of the property in 1794, John J. Van Rensselaer entered into an agreement with Daniel Penfield, on 4 November of that year. As these articles were much discussed in the argument, it is proper to make extracts from them as to those points which were the subject of discussion.

"Articles of agreement had, made, entered into, and finally concluded upon this fourth day of November in the year of our Lord one thousand seven hundred and ninety-four by and between John J. Van Rensselaer of Greenbush, in the County of Rensselaer, of the one part, and Daniel Penfield of the City of New York, of the other part, witnesseth:"

"Imprimis, the said John J. Van Rensselaer, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said Daniel Penfield, his heirs, executors, and administrators that he, the said John J. Van Rensselaer, together with Catherine, his wife, shall and will, within the term of three months from the date hereof, by a good and sufficient deed and conveyance in the law, such as by the counsel of the said Daniel Penfield, his heirs or assigns, shall be reasonably advised, devised, or required, and that free and clear, and freely acquitted and discharged of and from all encumbrances and charges, other than leases heretofore given by the said John J. Van Rensselaer and his ancestors, assign, release, convey, assure, bargain, sell, grant, and confirm unto

the said Daniel Penfield, his heirs and assigns forever, all the right, title, interest, property, claim, and demand, either in possession, reversion, or remainder, of him, the said John J. Van Rensselaer and Catherine, his wife, of, in, or to all that tract and parcel of land situate, lying, and being in the Town of Claverack, and City of Hudson, and County of Columbia, and included within the boundaries following, to-wit, that is to say, beginning,"

&c.;, going on to describe the land,

"together with all and singular the waters, watercourses, and streams of water, profits, advantages, hereditaments, and appurtenances whatsoever thereunto appertaining and belonging, or which have been considered and used, or now are used and occupied, as part and parcel thereof, in as full and ample a manner as the said John J. Van Rensselaer now hath and enjoyeth the same, and in as

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full and ample a manner as the same have heretofore been had and enjoyed by the said John J. Van Rensselaer, or lawfully may be had, used, occupied, possessed, and enjoyed by him, his heirs or assigns, to have and to hold the same unto the said Daniel Penfield, his heirs and assigns forever, excepting, reserving, and saving thereout all the land included within the foregoing and above-described boundaries, which have been heretofore granted,"

&c.;, going on to enumerate the leases made and agreed to be made.

Then followed covenants on the part of Penfield to pay for the quantity of land, to pay the mortgages to Schuyler, to secure the payment of the installments by mortgage, to execute leases to the persons with whom John J. had agreed that leases should be made, and other covenants, which it is not material to state.

On 1 January, 1795, John J. Van Rensselaer and Catherine, his wife, executed the deed to Penfield, in conformity with the above articles. The deed is short, and, as many parts of it were criticized in the argument, it may be proper to insert it entire.

"This indenture, made the first day of January, 1795, between John J. Van Rensselaer, of the County of Rensselaer and State of New York, Esquire, and Catherine, his wife, of the one part, and Daniel Penfield, of the City of New York, esquire, of the other part:"

"Whereas certain articles of agreement, indented, were made and executed by and between the said John J. Van Rensselaer of the one part and the said Daniel Penfield of the other part, bearing date the fourth day of November last past, in the words following, to-wit:"

"Imprimis, the said John J. Van Rensselaer, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said Daniel Penfield, his heirs, executors, and administrators, that he, the said John J. Van Rensselaer, together with Catherine, his wife, within the term of three months from the date hereof, by a good and sufficient deed and conveyance in the law, such as by the counsel of the said Daniel Penfield, his heirs or assigns, shall be reasonably advised, devised, or required, and that free and clear, and freely acquitted and discharged of and from all encumbrances and charges other than leases heretofore given by the said John J. Van Rensselaer and his ancestors, assign, release, convey, assure, bargain, sell, grant, and confirm unto the said Daniel Penfield, his heirs and assigns forever, all the right, title, interest, property, claim, and demand, either in possession, reversion, or remainder, of him, the said John J. Van Rensselaer,

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and Catherine, his wife, of, in, or to all that tract and parcel of land, situate, lying, and being in the Town of Claverack, and City of Hudson, in the County of Columbia, and included within the boundaries following, to-wit, that is to say:"

"Beginning at the mouth of Major Abraham's or Kinderhook Creek; thence running south eighty-four degrees and thirty-eight minutes east, ten miles; thence running south forty degrees west, as far as the right of John Van Rensselaer, the grandfather of the said John J. Van Rensselaer, extended; from thence to

Wahankasick; and thence up Hudson River to the place of beginning, together with all and singular the waters, watercourses, and streams of water, profits, advantages, hereditaments, and appurtenances whatsoever thereunto appertaining or belonging, and which have been considered and used, or now are used and occupied, as part and parcel thereof, in as full and ample a manner as the said John J. Van Rensselaer now hath and enjoyeth the same, and in as full and ample a manner as the same have heretofore been had and enjoyed by the said John J. Van Rensselaer, or lawfully may be had, used, occupied, possessed, and enjoyed by him, his heirs or assigns, to have and to hold the same unto the said Daniel Penfield, his heirs and assigns forever, excepting, reserving, and saving thereout all the land included within the foregoing and above-described boundaries, which have been heretofore granted by letters patent prior to the grants, patents, and confirmations under which the right and title of the said John J. Van Rensselaer is derived, excepting also all lands sold or granted otherwise than by lease by the late John Van Rensselaer, deceased, and the aforesaid John J. Van Rensselaer, and all the lands granted by lease from the said John Van Rensselaer, deceased, to Robert Van Rensselaer, situate, lying, and being in the said Town of Claverack, in the County of Columbia, and excepting also the quantity of fifty acres of woodland, to be granted by the said Daniel Penfield to Henry J. Van Rensselaer, and situate within the boundaries before mentioned and described, and to be by them agreed on, and excepting also all that tract of land situate in the City of Hudson and Town of Claverack formerly devised by Hendrick Van Rensselaer to Henry Van Rensselaer, deceased, and excepting, also, the farm of land in possession of the representatives of Eytie Moore deceased, and by the said John J. Van Renssselaer conveyed to John Van Rensselaer, which said deed shall be duly acknowledged by the said John J. Van Rensselaer and Catharine, his wife, pursuant to the act in such case made and provided, as in and by the said articles of agreement, relation being thereunto especially had, may among other things more fully appear. "

"Now therefore, this indenture witnesseth that the said John J. Van Rensselaer and Catharine, his wife, for and in consideration of the sum of forty-four thousand five hundred and fifty dollars to them in hand paid, the receipt whereof they do hereby acknowledge, and therefrom release and discharge the said Daniel Penfield, his heirs and assigns, have granted, bargained, sold, aliened, enfeoffed, assured, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, assure, release, and confirm, unto the said Daniel Penfield, in his actual possession now being, by virtue of a bargain and sale to him thereof made for one whole year by the said John J. Van Rensselaer, by indenture bearing date the day next before the day of the date of these presents, and by force of the statute for transferring uses into possession, and to his heirs and assigns forever, all and singular the aforesaid tract of land above described, lying and being in the Town of Claverack and City of Hudson, and so butted and bounded as is above particularly mentioned, together with all and singular the waters, watercourses, and streams of water, profits, advantages, hereditaments, and appurtenances whatsoever thereto appertaining and belonging, or which have been considered and used, or now are used and occupied, as part and parcel thereof, excepting, reserving, and saving thereout all the lands included within the foregoing and above-described boundaries, which are excepted, saved, and reserved in the said in part recited articles of agreement; which said tract of land, after deducting the said exceptions, reservations, and savings, contains the quantity of thirty-three thousand six hundred and fifty-eight acres of land, and the reversion and reversions, remainder and remainders, rents, issues, services, and profits thereof, and also all leases of and concerning any part or parts of the said granted premises; and also all the estate, right, title, interest, property, possession, claim, and demand of them, the said John J. Van Rensselaer and Catherine, his wife, of, in, and to the same, to have and to hold the said tract of land so described and so butted and bounded as above recited, excepting, saving, and reserving, as are above particularly excepted, saved, and reserved, unto the said Daniel Penfield, his heirs and assigns, to the only proper use and behoof of the said Daniel Penfield, his heirs and assigns forever, in as full and ample a manner as the said John J. Van Rensselaer now hath and enjoyeth the same, and in as full and ample a manner as the same hath heretofore been had and enjoyed by the said John J.

Van Rensselaer, or lawfully might, if these presents were not made, be had, used, occupied, possessed, and enjoyed by him, his heirs or assigns."

"And the said John J. Van Rensselaer, for himself, his heirs, executors,

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and administrators doth covenant, grant, and agree, to and with the said Daniel Penfield, his heirs and assigns, in manner following, that is to say, that the said tract of land described, butted and bounded as aforesaid, excepting, saving, and reserving as above are excepted, saved, and reserved, is free and clear, and shall and may be held and enjoyed by the said Daniel Penfield, his heirs and assigns, according to the true intent and meaning of these presents, freely and clearly acquitted and discharged of and from all encumbrances and charges, other than leases heretofore given by the said John J. Van Rensselaer and his ancestors, or any of them, and except a certain mortgage upon the premises executed by the said John J. Van Rensselaer to Philip Schuyler, esquire, dated the 11th day of August, 1791, to secure the payment of three thousand one hundred pounds."

"In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written."

"JOHN J. VAN RENSSELAER [L.S.]"

"CATHERINE VAN RENSSELAER [L.S.]"

On 15 October, 1806, Penfield and wife conveyed all the property to John Watts enumerating in the deed all the leases, which were to stand good.

In 1813, John Van Rensselaer, the eldest son of John J. died without issue.

On 26 September, 1828, John J. Van Rensselaer, who had sold the property to Watts died also.

At some time previous to the year 1836, but when the record did not show, Jeremiah Van Rensselaer, a citizen of New Jersey, being the eldest surviving son

of John J., filed his bill in the Circuit Court of the United States for the Southern District of New York against John Watts and against Catherine G. Visscher, Cornelius G. Van Rensselaer, and Glen Van Rensselaer. In the bill he alleged that all the estate and interest which John J. Van Rensselaer acquired under the will of his grandfather was an estate for his own life merely, and that the said John J. was unable to vest, and did not vest, any greater interest in Penfield. Claiming the whole estate, he called upon Watts for an account of the rents and profits, and for a surrender of the title papers.

As to his brothers and sister, the bill proceeded thus:

"Your orator further charges that the said Catherine G. Visscher, Cornelius G. Van Rensselaer, and Glen Van Rensselaer, who are citizens of the State of New York, give out and pretend that the said John J. Van Rensselaer had a son named

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John Van Rensselaer, who, as they allege, was born in the year 1791 and died in the year 1813, and they further allege that upon his birth the said estate, devised to the eldest son of the said John J. Van Rensselaer in and by the said will, vested in the said John Van Rensselaer, and that by the operation of law it was turned into an estate in fee and descended, upon the death of the said John Van Rensselaer, to the said John J. Van Rensselaer, and that upon the death of the said John J. Van Rensselaer in the year 1828, it descended to his heirs at law as tenants in common, whereby, as they allege, they are each entitled to a fourth part of the said estate and to the rents and profits accruing thereupon. Whereas your orator charges that the said estate, and the rents and profits thereof belong to him."

The bill then prayed that the complainant might be quieted in his title to the whole of the premises, or, in case it should be decided that he was entitled only to one-fourth part, then that the court would decree accordingly.

The brothers and sister answered, admitting the facts stated in the bill, and submitting themselves to the judgment of the court.

Watts put in a plea denying all knowledge of any title except that of Penfield at the time of his purchase and prayed that he might not be compelled to answer further. The court allowed the plea to stand as to the discovery, but ordered a further answer as to the title.

In September, 1836, John Watts died, leaving Philip Kearney and Frederic De Peyster his executors. A supplemental bill and bill of revivor was then filed making them parties, and also Philip Kearney, Jr., Susan Kearney, and John Watts De Peyster, the devisees of the property in question. The new parties answered and sundry exhibits were filed and depositions taken. In May, 1846, the cause came on for argument in the circuit court, which passed the following decree. Judge Nelson being unable to attend from sickness, the decree was given by Judge Betts.

"First. That the remainder in tail, in the premises mentioned in the pleadings in this cause, created by the will of John Van Rensselaer the elder, vested in John, his great-grandson on his birth in the year 1791, and that said great-grandson was seized of such remainder."

"Second. That the tenant in tail under the said will, acquiring such estate in remainder, became thereby so seized of the lands, tenements, and hereditaments devised that the Act of February 23, A.D. 1786, converted such estate tail into a fee simple absolute. "

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"Third. That the said John, the great-grandson of the said John Van Rensselaer the elder, took the estate in question as a purchase, and thus became a new stock of descent, and was so seized thereof that at his death in the year 1813 the whole estate descended to his father John J. Van Rensselaer and his heirs at law."

"Fourth. That the covenants in the deed of John J. Van Rensselaer conveying the premises in question to David Penfield, bearing date the 1st day of January, A.D. 1795, amount in law to a covenant against all encumbrances except such as are specifically designated in the said deed, and also to a covenant for quiet enjoyment, subject only to the like exceptions."

"Fifth. That the said covenants in the said deed operate as an estoppel to John J. Van Rensselaer's claiming the estate subsequently acquired by him as against his grantee, and that the estoppel operates equally against the complainant in this suit, who makes title to the estate in question as one of the heirs at law of John J. Van Rensselaer."

"Sixth. That the deed of Daniel Penfield to John Watts bearing date 15 October in the year 1806, conveying the said estate to the said John Watts in fee, with full covenants, entitles his devisees and representatives, now in possession of the premises, and who are defendants in this cause, to a decree dismissing the complainant's bill in this cause, with costs."

"It is therefore ordered, adjudged, and decreed by this Court that the complainant's said bill of complaint be, and the same hereby is, dismissed, and that the said complainant pay to the said defendants or their solicitor their costs of this suit, to be taxed, and that the said defendants have execution therefor according to the course and practice of this Court."

"[Signed] SAMUEL R. BETTS"

The complainant appealed to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

John Van Rensselaer, being seized in fee of a large tract of land in the County of Columbia, State of New York, made and published his last will and testament on 25 May, 1782, by which he devised the same to John J. Van Rensselaer, his grandson, for and during his natural life, and from and after his decease to the first son of the body of the said John J. lawfully begotten, and to the heirs male of his body; and, in default of such issue, then to the second, third, and every other son of the said John J., successively, and, in remainder, the one after the other, as they shall be in seniority of birth, and the several and respective heirs male of the first, second, third, and other son or sons, the eldest of such sons and the heirs

male of his body being always preferred.

The testator died in 1783 leaving John J., the grandson, surviving, who entered into the possession and enjoyment of the estate. John J. had five children, John, the first-born, whose birth was in 1791, Jeremiah, the present complainant, Cornelius, and Glen, and a daughter, Catherine G.

By an Act of the Legislature of the State of New York passed 23 February, 1786, it was enacted as follows:

"That all estates tail shall be, and hereby are, abolished, and that in all cases where any person or persons now is, or, if the act hereinafter mentioned and repealed [referring to an act passed 12 July, 1782] had not been passed, would now be, seized in fee tail of any lands, tenements, or hereditaments, such person and persons shall be deemed to be seized of the same in fee simple absolute, and further that in all cases where any person or persons would, if the said act and this present act had not been passed, at any time hereafter become seized in fee tail of any lands, tenements, or hereditaments by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to become seized thereof in fee simple absolute."

3 Rev.Stat.N.Y. 1st ed., App. 48; 1 Rev.Laws, 1813,p. 52.

As we have already stated, John, the first-born son of John J., the grandson, was born in 1791, and he died without issue in 1813, while the life estate was running, his father having survived until 1828.

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On the birth of John, the first-born, his remainder as the first tenant in fee tail, which was before contingent, became vested in interest, and he was thereafter seized of an estate tail in remainder, the vesting in possession being dependent upon the termination of the life estate.

The interest in the estate in remainder in which they vested immediately on his birth carried with it a fixed right of future enjoyment in possession the instant the life estate terminated.

The question upon this branch of the case is whether or not the estate in fee tail in remainder thus acquired under the will of John Van Rensselaer was converted into a fee simple absolute in John, the first-born son of John J., by the operation of the act of 1786, abolishing entails.

The act provides that if any person shall thereafter "become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise," &c., he shall be deemed to have become seized in fee simple absolute.

It is admitted that John, the first-born, took a vested remainder in fee tail under the will the instant he came into being and that he was seized of an estate in remainder in the premises in question, but it is insisted that this is not the character of the estate described in the statute and which is there turned into a fee simple; that in order to bring the case within it, the tenant in tail in remainder must be vested in possession as well as in interest, and without which he cannot be said to be seized of the lands, tenements, or hereditaments, and as John died during the running of the life estate, and therefore was never seized in possession, the fee simple did not vest in him under the statute, but was postponed to the next tenant in tail, the second son, Jeremiah, who is the complainant in the suit.

We do not propose to enter into an examination of this question, and which involves the true construction of the act of 1786, as that act has been several times before the courts of New York and its construction settled by the highest authority in that state. *Vanderheyden v. Crandall*, 2 Denio 9; S.C. on appeal, 1 Comstock 491; *Van Rensselaer v. Poucher*, 5 Denio 35

One of the cases arose under the will before us, and involved the question as to the effect of the act upon the estate of John, the first-born tenant in tail, the same as here.

The construction of the act as given in these cases must form the rule of decision upon the question, according to the established course of proceeding in this Court. [25 U. S. 12](#) Wheat. 167, [25 U. S. 168](#) ; [31 U. S. 6](#) Pet. 291; [48 U. S. 7](#) How. 818; [49 U. S. 8](#) How. 558, [49 U. S. 559](#)

In the case in the court of Appeals in New York, Mr. Justice Bronson, who delivered the judgment of the court, observed

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that

"it is true the statute speaks of a person seized of lands, tenements, or hereditaments, and in general, seizure of lands, means actual possession of them. But, taken in their connection, the words evidently mean seizin of an estate in lands. The legislature began by speaking of estates tail; that was the subject in hand; those estates were to be turned into estates of a different tenure or quality, and the lawmakers must be understood as speaking of the same thing in the latter part of the clause which they had mentioned in the first."

He observes,

"As I read the statute, the provision is that all estates tail shall be abolished, and where any person now is seized of an estate in fee tail on any lands &c., such person shall be deemed to be seized of the same to-wit, an estate in the lands in fee simple."

He further remarks,

"The third section, which regulates descents, like the first, which abolishes entails, speaks of a person seized of lands, tenements, or hereditaments, and I think the word 'seizin' was used in the same sense in both sections. One who has a vested remainder in fee simple expectant on the determination of a present freehold estate has such a seizin in law, when the estate was acquired by purchase, as will constitute him a stirps or stock of descent under the third section. And the person who has a vested remainder in fee tail, acquired in the same way, has such a

seizin in law as brings his case within the operation of the first section. His remainder in fee tail is turned into a remainder in fee simple. The first section brings the case under the influence of the third. And the estate no longer follows the will of the donor, but is governed by the general law of descents."

This being regarded as the true construction of the act of 1786, it follows that John, the first-born son of John J., took an estate in fee simple absolute in remainder in the premises, and that on his death in 1813, it descended, according to the law of New York, to his father, the life tenant, and the two estates being thus united in him, he became vested with the whole estate in fee simple absolute.

The complainant therefore has failed to make out any estate in the premises under the will of John Van Rensselaer. And can claim title only through his father, John J., as one of the heirs of his estate.

The tract of land in question embraces between thirty-three and thirty-four thousand acres, and on 1 January, 1795, John J., the life tenant, sold and conveyed the same in fee to Daniel Penfield for the consideration of \$44,550.

It is more than probable it was the opinion of the profession in New York at the date of this conveyance that John J., the

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grandson, took an estate in fee tail under the will of his grandfather, within the Rule in Shelley's case, which the act of 1786 had turned into a fee simple absolute, and that the purchase was made under the belief that he was competent to convey the fee.

It is admitted, however, that this construction, which may have been given at the time, was a mistaken one, and that he took only an estate for life, which terminated on his death 26 September, 1828. At that time, we have seen, he was seized of the whole estate in fee in consequence of the death of his eldest son, the first-born tenant in fee tail in 1813, and which descended to his four children, three sons and a daughter, as tenants in common, of whom the complainant is one,

unless they are estopped from setting up the title by the deed of the 1st of January, 1795, to Penfield, under whom the defendants hold.

On the part of the complainant it is insisted that the conveyance is a deed of bargain and sale, and quitclaim, without any covenants of title or warranty, and therefore could operate to pass only the estate for life of which the grantor was then seized; that it contains no appropriate words, when taken together, by force of which the subsequently acquired title enured to the benefit of the grantee, or those claiming under him, or that can estop the heirs from denying that he had any greater estate than the tenancy for life; and that the deed purports on its face to grant and convey simply the right, title, and interest which the grantor possessed in the premises at the time, and nothing more; that the only covenant is a covenant against encumbrances, which affords indemnity against any liens or charges upon the estate conveyed but which cannot be regarded as warranting the title, and that this express covenant takes away all implied ones.

This is the substance of the argument on the part of the appellant.

By the covenant against encumbrances, the grantor, for himself and his heirs, covenants and agrees to and with the grantee and his heirs and assignees that the tract of land conveyed, excepting parts previously sold in fee by his ancestor, John Van Rensselaer, and by himself; also, lands leased to Robert Van Rensselaer, a lot of woodland to be conveyed by the grantee to H. J. Van Rensselaer, a tract lying in the City of Hudson, and a farm in the possession of Mrs. Moore -- with the exception of these several parcels, the grantor covenants that the tract conveyed is free and clear, and shall be held and enjoyed by the grantee, his heirs and assigns, according to the true intent and meaning of these presents, freely and clearly

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acquitted and discharged of and from all encumbrances and charges other than leases heretofore given by the said grantor and his ancestors.

This covenant, it will be seen, excepts out of the indemnity, in express terms, parcels of land previously granted out of the tract in fee simple, and the title to which was outstanding in third persons, and also the leases which had been given in fee or for the lives of the lessees, on which rents had been reserved, and which leases were to be transferred to the grantee as rents and profits belonging to the estate, and which he was to enjoy.

The draftsman seems to have supposed that the outstanding titles in fee in these several tracts, and also the leases in fee and for lives previously granted and above referred to, would have been embraced within the covenant unless expressly excepted out of it, and that they might be regarded as an encumbrance upon the estate which the deed purported to convey, and consequently a breach of this covenant against encumbrances. This is the natural, if not the necessary, implication from the structure of the covenant, for otherwise the exceptions are without meaning.

And by parity of reasoning, the implication is equally strong that the covenant embraced and was intended to embrace and secure to the grantee and his heirs the whole of the interest and estate in the tract which the deed purports to convey, saving and excepting only the parcels and portions of the title thus enumerated and taken out of it, and hence if any outstanding title existed not enumerated and excepted, there would be grounds for alleging a breach of the covenant and for claiming that the grantee, his heirs or assigns, were entitled to an action to recover indemnity for such diminution of the estate.

This result would seem almost necessarily to follow from the nature and structure of the covenant unless we regard it as inserted mainly for the benefit of the grantor, to enable him to make the exceptions. For it is but reasonable to presume that the draftsman, in making the exceptions, did not stop short in the enumeration of the parts and portions of the estate and title intended to be saved from its operation, or that he omitted any right or interest not intended to pass by the conveyance. And hence the reasonableness of the implication that every part of the estate and interest in the same that the deed purported to convey was intended to be embraced within the covenant not included within the exception.

These several rights and interests had already been excepted out of the granting clause in the deed, and hence the exception

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in this part of the instrument was not necessary for this purpose. The exception here related exclusively to the covenant of enjoyment of the premises free from all encumbrances, and was intended as a saving from its scope and obligation.

There is much force, therefore, in the argument that this covenant, from its peculiar phraseology and structure, was intended as something more than a simple covenant against encumbrances and charges upon the estate, and that it was intended by the parties as a covenant of the title which the deed purported to convey, and if so, this of itself would operate upon the estate subsequently acquired by the grantor, so that it would, as against him and all persons claiming under him, enure to the benefit of the grantee, his heirs and assigns.

But independently of this view and of any covenants of title, in the technical sense of the term, in the deed of 1st January, 1795, we are of opinion that the complainant is estopped from denying that John J. Van Rensselaer, the grantor, was seized of an estate in fee simple at the date of that deed, the grounds of which opinion we will now proceed to state.

The general principle is admitted that a grantor, conveying by deed of bargain and sale, by way of release or quitclaim of all his right and title to a tract of land, if made in good faith and without any fraudulent representations, is not responsible for the goodness of the title beyond the covenants in his deed. [48 U. S. 7](#) How. 159; 2 Sugden on Vendors, ch. 12, 2, 421; 2 Kent's Comm. 473; 4 *id.* 471, note; 1 Cow. 616; 9 Cow. 1; 4 Wend. 622; 7 Conn. 256; 11 Wend. 110; S.C., 13 Wend. 78; 12 Pick. 78; 1 Rev.Stat.N.Y. 739, 143, 145; 15 Pick. 23; 14 Johns. 193

A deed of this character purports to convey, and is understood to convey, nothing more than the interest or estate of which the grantor is seized or possessed at the time, and does not operate to pass or bind an interest not then in existence. The bargain between the parties proceeds upon this view, and the consideration is

regulated in conformity with it. If otherwise, and the vendee has contracted for a particular estate or for an estate in fee, he must take the precaution to secure himself by the proper covenants of title.

But this principle is applicable to a deed of bargain and sale by release or quitclaim, in the strict and proper sense of that species of conveyance. And therefore, if the deed bears on its face evidence that the grantors intended to convey and the grantee expected to become invested with an estate of a particular description or quality, and that the bargain had proceeded upon that footing between the parties, then although it may not contain any covenants of title in the technical sense of the

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term, still the legal operation and effect of the instrument will be as binding upon the grantor and those claiming under him in respect to the estate thus described as if a formal covenant to that effect had been inserted, at least so far as to estop them from ever afterwards denying that he was seized of the particular estate at the time of the conveyance.

The authorities are very full on this subject. *Goodtitle v. Bailey*, Cowp. 601; *Bensley v. Burdon*, 2 Sim. & Stu. 524; S.C., 5 Russell 330; 2 Barn. & Ad. 278, where this case is referred to; *Doe ex dem. Marchant v. Ewington*, 8 Scott, 210; *Rees v. Lloyd*, Wightwick 129; *Bowman v. Taylor*, 2 Ad. & Ellis 278; *Lainson v. Tremere*, 1 *id.* 792; *Stone v. Wise*, 7 Conn. 214; *Penrose v. Griffith*, 5 Binney 231; *Denn v. Cornell*, 3 Johns.Cas. 174; 8 Cow. 586; [*Carvey v. Jackson ex dem. Astor*](#), 4 Pet. 1; 7 Greenl. 96; 4 Kent's Com. 271, note; 1 Smith's Leading Cases 450, note to the *Duchess of Kingston's Case*.

In the case of *Bensley v. Burdon*, the party granting the estate recited that he was entitled to a remainder in fee, expectant upon the determination of the life estate of his father in certain premises therein described. In point of fact, he had no interest in the premises at the time, but became vested with an estate for life in a part of them some two years afterwards, under the will of his father, and soon

after conveyed this interest to the defendant.

The Vice-Chancellor held that the grantor, having averred in the deed that he was seized of a remainder in fee expectant on the death of his father, he was estopped from setting up that at the time of the grant he was not duly seized of the estate according to the averment; that the estoppel run with the land, and bound not only the grantor but all claiming under him, and that the defendant was therefore equally estopped from denying the title.

There was an appeal in this case to the Lord Chancellor, and his decision is referred to as reported in 5 Russell 330, but there is an error in the reference, and I have not been able to find it.

But in *Right ex dem. Jefferys v. Bucknell*, 2 Barn. & Ad. 281, Lord Tenterden refers to the case and says that the judgment of the Vice-Chancellor was affirmed, and that the Chancellor put his decision on the ground that the recital of the interest of the grantor in the premises was an averment of a particular fact, by which the defendant was concluded.

And in the case of *Doe ex dem. Marchant v. Ewington*, which was an action of ejectment to recover possession of a set of chambers in Lincoln's Inn, it appeared that one Boileau, having been admitted by the Benchers of the society, the owners

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of the fee to the chambers for life, had granted the same to the lessor of the plaintiff in trust to secure an annuity, reciting in the deed that he was well entitled to an estate for life in the chambers.

Afterwards Boileau, by an arrangement with the defendant, surrendered to him the possession of the chambers, who continued to occupy them at the time of the commencement of the suit, which was brought in consequence of the annuity's being in arrear.

By the regulations of the society it appeared that in order to surrender possession, the person last admitted must present a petition to the Masters of the Bench for

permission to surrender, first paying all his arrear of dues, and the person who is to succeed must also present a petition to be admitted; and thereupon, if consent be given, then an order is entered that the person admitted may have leave to surrender, and the person who is to succeed may be admitted on paying the fine and fees. And that it is in the discretion of the masters, for the time being, to make such orders for the admission to or exclusion from chambers in the Inn as they may think fit.

The lessor of the plaintiff sought to recover on the ground that Boileau was estopped from denying that he was seized of an estate for life in the chambers by the recital in his conveyance, and that the defendant coming in under him was equally estopped.

Tindall, C.J., in giving judgment, observed that the case had very properly been argued on the ground of estoppel, for if it were a question of title, the lessor of the plaintiff would clearly be out of court. That he must claim under the estoppel created by the recital in the deed of conveyance. He admitted that Boileau was bound by the recital, and the defendant also if in privity of estate; that according to the old authorities he must either come in the per or the post -- that is, he must claim from, through, or under the party. That the defendant did not claim under Boileau, but under the trustees of the society of Lincoln's Inn, and therefore was not estopped from denying the title.

Coltman, J. observed that as between Boileau and the lessor of the plaintiff, the former might be estopped from denying that he had the estate he represented by his deed, but that to enable the plaintiff to succeed, it was necessary for him to show that the defendant claimed through or under Boileau, so that the estoppel should affect him.

In the case of *Bowman v. Taylor*, Lord Denman, C.J. observed that

"as to the doctrine laid down in Co.Litt. 352 b, that a recital doth not conclude, because it is no direct affirmation,

the authority of Lord Coke is a very great one; but still, if a party has by his deed recited a specific fact, though introduced by a 'whereas,' it seems to me impossible to say that he shall not be bound by his own assertion so made under seal."

And Taunton J. remarked in the same case that the law of estoppel is not so unjust or absurd as it has been too much the custom to represent. The principle is that where a man has entered into a solemn engagement by deed under his hand and seal as to certain facts, he shall not be permitted to deny any matter which he has so asserted.

In the case of *Fairbanks v. Williamson*, there was no covenant of title in the deed, which was in fee, but the grantor covenanted that neither himself, his heirs, or assigns would ever make any claim to the premises. The court held that this operated as an estoppel, not only upon him, but upon all claiming under him, from setting up an after-acquired title to the land against the grantee or those in privity with him.

In *Jackson ex dem. Munroe v. Parkhurst*, 9 Wend. 209, the recovery was placed altogether on the ground of estoppel, the defendant holding under the grantor of the deed in which the title was recited. And in *Right ex dem. Jefferys v. Bucknell*, where the recital in the deed was that the grantor was legally or equitably entitled to an estate in fee in the premises, the court refused to bind the party coming in under him as a purchaser for a valuable consideration of the after-acquired title solely on the ground that there was no certain and precise estate set forth in the recital.

The principle deducible from these authorities seems to be that whatever may be the form or nature of the conveyance used to pass real property, if the grantor sets forth on the face of the instrument, by way of recital or averment, that he is seized or possessed of a particular estate in the premises, and which estate the deed purports to convey, or -- what is the same thing -- if the seizin or possession of a particular estate is affirmed in the deed either in express terms or by necessary implication, the grantor and all persons in privity with him shall be estopped from ever afterwards denying that he was so seized and possessed at the time he

made the conveyance. The estoppel works upon the estate and binds an after-acquired title as between parties and privies.

The reason is that the estate thus affirmed to be in the party at the time of the conveyance must necessarily have influenced the grantee in making the purchase, and hence the grantor and those in privity with him, in good faith and fair

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dealing, should be forever thereafter precluded from gainsaying it.

The doctrine is founded, when properly applied, upon the highest principles of morality, and recommends itself to the common sense and justice of everyone. And although it debars the truth in the particular case, and therefore is not infrequently characterized as odious and not to be favored, still it should be remembered that it debars it only in the case where its utterance would convict the party of a previous falsehood; would be the denial of a previous affirmation upon the faith of which persons had dealt, and pledged their credit or expended their money.

It is a doctrine, therefore, when properly understood and applied, that concludes the truth in order to prevent fraud and falsehood and imposes silence on a party only when in conscience and honesty he should not be allowed to speak.

Now applying this doctrine to the case in hand, our next inquiry will be whether or not John J. Van Rensselaer affirmed in his deed of January 1, 1795, to Penfield, that he was seized of an estate in fee in the premises, and whether the deed purports on its face to convey an estate of that description.

As to the question involved in the latter branch of the inquiry, we need only refer to the words of the grant to determine it. The deed is of all the right, title, and interest of the grantor in the tract of land to Penfield, his heirs and assigns forever, terms that would have passed an estate in fee if John J. had been seized of it at the time of the conveyance.

The most important question arises upon the other branch of the inquiry. Has the grantor affirmed on the face of the deed that he was seized of this particular estate in the premises at the time he made the grant?

The argument on the part of the complainant is that although the granting words of the deed are broad and comprehensive -- such as

"have granted, bargained, sold, aliened, enfeoffed, assured, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, assure, release, and confirm unto the said Daniel Penfield, . . . and to his heirs and assigns forever, all and singular the aforesaid tract of land,"

&c.;

"and also all leases of and concerning any part or parts of the said granted premises, and also all the estate, right, title, interest, property, possession, claim, and demand of them, the said John J. Van Rensselaer and Catherine, his wife, in the same,"

yet the grant is qualified by the *habendum* clause --

"to have and to hold the said tract of land so described, and so butted and bounded as above recited &c.;

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use and behoof of the said Daniel Penfield, his heirs and assigns forever in as full and ample a manner as the said John J. Van Rensselaer now hath and enjoyeth the same and in as full and ample a manner as the same hath heretofore been had and enjoyed by the said John J. Van Rensselaer, or lawfully might, if these presents were not made, be had, used, occupied, or enjoyed by him, his heirs or assigns."

This latter clause, it is supposed, restricts and qualifies the general words in the grant, and confines the effect and operation of the deed to the conveyance of such

an estate as the grantor was seized and possessed of at the time, and as this was an estate for life with remainder over, it operated and was intended to operate to convey only this estate.

Were there nothing else in the case, there might be much difficulty in furnishing a satisfactory answer to this view, although no one, we think, can read the deed without being strongly impressed with the conviction that both parties supposed they were dealing with the fee, and that the bargain was made upon that understanding.

But in order fully to comprehend and interpret this qualifying clause in the *habendum*, it is material to look into the nature and condition of the title at the time, and the mode of enjoying the estate, and also into the evidences of the title which were turned over to the purchaser at the execution of the contract, all of which appear in the deed and articles of agreement therein recited and referred to.

As we have already said in another branch of the case, a part of the tract had been previously conveyed in fee, and amongst others by the grantor himself, and which is excepted from the grant. Much the larger part was at the time in the occupation of tenants under leases in fee, or for the lives of the lessees, with rents reserved, made, amongst others, also by John J., which leases were transferred to Penfield as muniments of the title. The articles of agreement provided for the transfer of these leases, and the deed itself in terms embraces them in the granting clause.

In the articles of agreement also, Penfield is required to covenant that he will execute leases, according to the terms and conditions upon which they had been usually granted, of certain portions of the tract to several persons therein named, and which leases, as we have seen, according to the custom of granting, were to be made in fee, or for the lives of the lessees. The deed also contains the recital of a mortgage in fee upon the estate, given by John J., 11 August, 1791, to Schuyler, for securing the payment of \$7,750, which Penfield was to discharge out of the purchase money.

Now all these instruments affecting the title, and showing the tenure and conditions by and under which the estate was held and enjoyed, are particularly referred to in the articles and in the deed of conveyance, and are thus virtually incorporated into the same, and were so for the purpose of describing with greater precision the nature and condition of the title and of the rights and interests of the grantor in the tract conveyed. And looking at them and at the right and title therein asserted and affirmed, and upon the faith of which the purchase was made and the deed taken, we shall be enabled to comprehend and give proper application to the words in the *habendum*, namely that the grantee, his heirs and assigns, shall hold in as full and ample a manner as the same is possessed, occupied, and enjoyed by the grantor, or as might be possessed and enjoyed by him, his heirs and assigns, if these presents had not been made.

Admit that the clause refers to the title and estate possessed by the grantor, as well as to the premises described, what title and estate? Manifestly that which is evidenced by the muniments of title before referred to and particularly identified and described in the granting clause of the deed, a title evidenced by leases in fee with rent reserved, made by John J. and his ancestors, and which passed to the grantee as securing the rents and profits issuing out of and belonging to the estate conveyed.

These leases characterize the title to the tract sold, and afford evidence that cannot be mistaken of the estate intended to be conveyed, and it was the enjoyment of this estate and interest in the premises in the manner and way in which the grantor had used, occupied, and enjoyed the same, to which the *habendum* clause refers. This affords a full explanation of its object and meaning.

The reference to these leases, and virtual incorporation of them into the deed, and transfer as muniments of the title, especially those made by John J. himself, together with the mortgage in fee to Schuyler which was to be raised out of the purchase money, and the covenants required of Penfield to grant similar leases to

certain persons named, all clearly import, on the face of the instrument, an assertion or affirmation on the part of the grantor that he was seized of a title that enabled him to make the leases and mortgage, and that would also enable Penfield to grant similar leases -- namely, leases in fee, and which brings the case directly within the principle of law already stated that estops him and those coming in under him from denying that he was so seized.

The estoppel works upon the estate and passes with it, and

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binds the title subsequently acquired by the death of his eldest son, the first-born tenant in tail.

We are satisfied, therefore, after the fullest consideration of the case, that the decree of the court below is right and should be

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

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