IRELAND.

APPEAL FROM THE COURT OF EXCHEQUER.

BAKER and others—*Appellants.*

MORGANS—*Respondents.*

June 17, July 27, 1814.

INFANTS.—EJECTMENT.

WHERE a landlord, or lessor, in 1781, by an ejectment for non-payment of rent, entered upon the possession of a widow, tenant for life of a lease for lives renewable for ever, remainder to her children, infants; and the children, in 1806, long after they came of age, and after the lessor had been in undisputed possession for upwards of 25 years, filed their bill for relief;—held by the House of Lords, reversing a decree of the Irish Court of Exchequer, that there was no ground whatever in this case for interference in equity.

Sentientibus Lords Eldon and Redesdale, that the proper proceeding, if any were adopted, would be a proceeding at law; that as to any irregularity in the proceedings in the ejectment under which the lessor was put in possession, that was a question for the consideration of the Court of King's Bench; and that the construction attempted to be put on the statute giving the remedy by ejectment to the landlord for non-payment of rent; viz. that rights of infants *in remainder* were saved, would vary the rights of the landlord, and was inconsistent with the effect of the entry for non-payment of rent, which was to revest the property in the landlord, in the same manner as before the lease had been granted.

Lease.

IN 1750 Lord Santry granted a lease for three lives, with covenant for perpetual renewal, to *Thomas Taylor*, of the lands of *Kilmore*, in the county of Dublin. *Taylor* demised part of these lands to *Edward Clinton*, for the same lives, and with covenant for perpetual renewal. Clinton demised the

same part of the lands to *Brunton Morgan*, for the same lives, with a similar covenant, reserving a profit rent; and afterwards assigned his remaining interest in the lands to Thomas Baker, the Appellant. Brunton Morgan died in 1779, having by will given his widow the benefit of the lease for her life; afterwards to go to his four children, share and share alike. In 1781, a considerable arrear of rent having accrued, Baker brought an ejectment; and having obtained judgment by default, an *habere* issued, and he was put in possession. Baker, after having expended considerable sums on the lands, in 1795, demised part of them to J. C. Beresford, for three lives, with covenant for perpetual renewal, at 110*l.* 15*s.* 7*d.* yearly rent.

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Will of lessee—widow tenant for life, remainder to his children.

Ejectment.

Purchase for valuable consideration.

In 1801 he several times publicly advertised the remaining part to be let to the highest bidder; and, in March, 1802, he demised that part to *James Coghlan*, for three lives, with covenant for perpetual renewal, in consideration of a fine of 1300*l.* and 241*l.* yearly rent.

In 1806 the three surviving children of Morgan (no step to redeem having been taken, nor any intimation of defect of title in Baker given, nor any claim made during a period of 25 years) filed their bill in the Exchequer; stating, that the ejectment was irregular, and that Baker had not been put in possession under it; the possession having been voluntarily given up by their mother, by agreement with Baker, during their minority; and praying that Baker might account as their guardian, and that they might be put in possession pursuant to their father's will. Baker answered, stating as

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Answers.

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above; and Beresford and Coghlan answered, stating that they were purchasers for valuable consideration without notice. Witnesses having been examined, some evidence was given, tending to show that Baker had been in possession by agreement with the mother at the time the *habere* was supposed to have been executed; that there had been no service of the declaration in ejectment; and that the proceeding had been in other respects irregular. On the other hand, the proceedings, as certified from the Court of King's Bench, appeared to have been perfectly regular.

At the time of filing the bill, the mother had been dead 16 years; the eldest of the Plaintiffs was 35 or 36, and the youngest 29, years of age. On June 9, 1809, the "Court decreed the lease of "1770, or a copy thereof, to be handed to the "Plaintiffs; an injunction to issue to put the Plain-"tiffs in possession; and Baker to account for the "profits of the lands from time of filing the bill." From this decree the Defendants appealed.

Decree, June 9, 1809. The ground of this decree was stated at the bar to be, that the statute saved the rights in remainder of infants.

For the Appellants it was contended,—1st, That supposing the Respondents had any right at all, it was a matter for proceeding at law, and not cognizable in equity; no special cause, such as suppression of deeds by the adverse party; no legal estate outstanding in another, &c. appearing, so as to prevent their availing themselves of the ordinary jurisdiction. 2d, That the alleged informality in the proceedings in the ejectment was a matter solely for the consideration of the Court of law. 3d, That the Appellants had no title in law or equity to the premises; the saving in the statute of the rights of

11 Ann. cap. 2, sect. 8.

infants, in cases of ejectment for non-payment of rent, extending only to rights in possession; and the infants here having at the time of such ejectment no estate in possession, but only a remainder after their mother's death. 4th, That Beresford and Coghlan being purchasers for valuable consideration without notice, their title could not be defeated.

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For Respondents it was contended that the proceedings in the ejectment appeared by the evidence to have been irregular, and that the ejectment was therefore a nullity; that at any rate the rights of infants in remainder and reversion, as well as in possession, were saved by the statute; that Beresford and Coghlan ought to have inquired more strictly into Baker's title; and that at any rate they would have their remedy against Baker.

11 Ann. cap. 2. sect. 8.

In the course of the argument *Lord Redesdale* said, that equity might try whether a judgment was obtained by fraud, but he never heard of equity trying the proceedings at law for irregularity.

Lord Eldon. It was clear that where judgment was got, and the *habere* issued, if the tenant then gave up that which at any rate she would be forced to give up, equity would not consider that as merely voluntary. If the bill stated a judgment by fraud, that was one thing; but he never heard before of a judgment impeached in equity for irregularity, without any attempt to set it aside at law.

Where tenant, after judgment in ejectment, and *habere* issued, gives up the possession to save the trouble of executing the writ, equity will not consider that giving up of the possession as voluntary.

Romilly and *Leach* for Appellants; *Piggot* and *Dowdeswell* for Respondents.

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Observations in judgment.

Lord Eldon, (Chancellor,) after stating the circumstances and previous proceedings. The Court of Exchequer must have thought that Baker was to be considered as having acted in the capacity of guardian to the Respondents, and on some such principle they directed an account. On their part they insisted that their mother was not ejected in due form of law, but had voluntarily given up the possession, and that this did not bar the children as if there had been a recovery in due form and course of law. In the next place they insisted, that if the proceedings had been regular, still they being then infants were not bound, the statutes of ejectment for non-payment of rent in arrear saving the rights of infants. As to the purchasers they denied notice, and there was a dispute in point of fact whether they had or not. In his view of the case it was not necessary to decide that question, his opinion being, that independent of that circumstance the Plaintiffs were not entitled to a decree.

So long ago as 1781, Baker obtained possession under the ejectment. The bill was filed in 1806, long after all the parties were of age. That there had been a proceeding in ejectment was certain: it might be difficult to say whether it was regular, and some matter of fact was brought forward connected with the question, whether the possession was voluntarily given up, or forcibly taken from the widow. But he could not imagine how, upon a bill filed in 1806, equity ought to trust itself to examine, as the ground of decree, whether a judgment in 1781 was regularly obtained. It would

be a dangerous thing where a judgment was obtained in 1781, and the party submitted to it for 25 years, if equity were then to examine, not into the merits, but into slips in point of form, and upon that ground to give relief.

Dangerous for equity to inquire into the irregularity of the proceedings on which a judgment at law had been given, after that judgment had been submitted to for 25 years without complaint.

As to the fact whether the Sheriff did really put the writ in execution, or whether the party to save trouble gave up the possession, it was a serious thing when the writ issued, and was returned executed, to say that this was to be a good ground of objection, because the party, who would otherwise be compelled to give up the possession, might choose to save expense and trouble by giving it up voluntarily.

If the rights in remainder of the infants were saved by the statute, the landlord's rights were varied.

Another very serious point was, that if the rights of the infants were saved, under circumstances of this description, the rights of the landlord were varied, and he might be prevented for ages from having his remedy by ejectment. But at any rate it was difficult to say how equity could interfere at all. If their right accrued on the death of their mother, and if there was no bar, how was it that they had no right of ejectment at law?

Lord Redesdale. The chief question as to the interference of equity, in such cases, had come before him in the case of the *O'Conners v. Lord Bandon*, and he was clearly of opinion that equity had nothing to do with the matter. In this case he apprehended, that even upon a simple entry by Baker the landlord for non-payment of rent, if he entered peaceably he could not be deprived of the possession, or even if forcibly, not after three years quiet possession, without a proceeding at law. The entry here

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The saving of the rights in remainder of infants inconsistent with the rights of the landlord, who, on entry, was reinstated as if no lease had been granted.

was on the possession of the widow, and it was said that the entry was lawful as to the widow, who was tenant for life, but not as to the children. That however was inconsistent with the entry of the landlord for non-payment of rent, which revested the property in him in the same manner as before the lease, and so the entry on the widow reinstated the landlord as if no lease had ever been granted; and equity could not, as he conceived, devest his possession. It was only a question at law. It was alleged that the statute protected the interests of infants in remainder and reversion as well as possession. This however would make the statute a trap for the landlord, whereas it was intended for his benefit.

The irregularity was only to be considered by the Court of law.

It had been objected that there had been irregularity in the proceedings in the ejectment; but that was not for equity, but for the Court of King's Bench to consider. It was said that the possession had not been actually delivered by the Sheriff. That might be immaterial, but at any rate the Sheriff's return said that it had. A very curious question would arise on their construction of the statutes. One would come of age before the other, and was the ejectment to be avoided as to each of them when he attained the age of 21 years, or was it to be avoided as against them altogether? The length of time during which one of them had been of age, before proceeding commenced, would be a strong objection even at law.

Purchasers for valuable consideration.

He could not dismiss the subject without adverting to the situation in which Beresford and Coghlan were placed by this decree. It was important to keep in view that they were both purchasers for va-

luable consideration. Both had taken possession, and expended money on the premises; and this was the first time where equity had turned a purchaser for valuable consideration out of possession, when the legal title was in him. The effect of turning them out of possession was to vest a right of action in them against Baker, who would thus be involved in difficulties beyond description. Was a purchaser for valuable consideration bound to see that the whole of a proceeding at law, under which the vendor or lessor was in possession, was perfectly regular? There never was a time when equity so dealt with purchasers for valuable consideration. Even if this ground then were tenable as against Baker, it was not tenable as against them.

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But there was nothing here to warrant the Plaintiffs to proceed in equity in any way. The proceeding, if any were competent, must be at law. They did not state that they wanted any necessary instrument; there was no affidavit to the bill of any such being lost;- and it even appeared by their own showing, that they had evidence to proceed by ejectment if they had so chosen. Equity therefore could not interfere.

Decree *reversed.*

Judgment.

Agent for Appellants, ROBINSON.
Agent for Respondents, WINDUS.