him from compelling **[479]** specific performance of the agreement in a court of equity.

Lord Lyndhurst had most carefully attended to the arguments that had been urged to the House, but saw no reason to alter the opinion he had delivered in the court below.

Judgment affirmed.

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[480] IN ERROR,

FROM THE IRISH EXCHEQUER CHAMBER.

ELIZABETH WARBURTON,—*Plaintiff in Error;* LOVELAND, *ex dem.* G. and H. IVIE,—*Defendant in Error.*

[S.C. 6 Bli. N.S. i.: and, in Court below, 1 Huds. and Brooke, 623. The rule as to construction of statutes, stated by Burton J. (1 Huds. and Brooke at p. 648) was adopted by Lord Wensleydale in *Abbott* v. *Middleton*, 1858, 7 H.L.C. 115; and again in *Thellusson* v. *Rendlesham* 1859 ib. at p. 519. See also, on the same point, *Reed* v. *Braithwaite* 1871 L.R. 11 Eq. 520: *Rhodes* v. *Rhodes* 1882, 7 A.C. 205: *Bradlaugh* v. *Clarke* 1883, 8 A.C. 384: *Hill* v. *East and West India Dock Co.* 1884, 9 A.C. 464.]

A term for 399 years, in certain lands in Ireland, being vested in B. for life, with the residue in his daughter, a settlement is made on the intermarriage of the daughter and W., by which the whole term is conveyed to trustees, on trust to pay the rents and profits to B., the father, for life, then to W., the husband, for life, then to the daughter for life, if she survived him, and afterwards to convey the term to the first son. This settlement is not registered. On the death of B., the father, W., the husband, demises the whole term for valuable consideration to K., and the indenture is duly registered; and K. afterwards assigns for like consideration his lease of the term to I. Held by the House of Lords, in conformity with the unanimous opinions of the attending Common Law Judges, that the registered indenture shall prevail over the unregistered settlement, and that the title of the assignee of the lease is to be preferred to that of the widow of W., and of the trustees under the settlement; and that this is so whether the assignment from K. to I. was registered or not, for the unregistered assignment would pass the interest as between the lessee and assignee, and there is no conflicting claimant under a registered deed. And this construction of the Registry Act, 6 Anne, c. 2, holds good whether the party executing the prior secret conveyance, and the subsequent registered deed, be the same party or not.

A Term for 399 years, in certain lands in Ireland, being vested in Benjamin Batt and his daughter Elizabeth, in the former for life, with the residue in the daughter, **[481]** a settlement is made in 1779, on the intermarriage of the daughter and Bartholomew Boyd Warburton, by which the term is assigned to trustees, in trust to permit Batt, the father, to have the rents and profits for life, with remainders to the husband and wife for their lives respectively, and the survivor. This settlement was not registered; and after the death of Benjamin Batt, Warburton, the husband, demised the whole of the term then to run to two persons of the name of Keogh, at a rent of 16s. per acre. That indenture was duly registered (26 May 1800): and afterwards the Keoghs assigned their interest in the lands to George and Henry Ivie for a consideration of £3000. Warburton, the husband, died in 1823, and the wife surviving brought her ejectment in the King's Bench against the Ivies, and had judgment and possession. The Ivies, afterwards, in 1825, brought an ejectment against her in the Irish Court of Exchequer, and at the trial a special verdict was found, which is as follows:

"And the Jurors aforesaid upon their oaths find, that Richard Christmas was, in the year 1713, seised in fee of the lands in the ejectment, and, being so seised, he

duly, by indenture of lease bearing date the 1st day of March, in the 12th year of the reign of her late Majesty Queen Anne, being the year 1713, demised the same unto Thomas Grubb for the term of 999 years, who thereupon entered, and was possessed thereof under said lease for the said term; that Mary Grubb was executrix of the said Thomas Grubb, and as such executrix of said Thomas Grubb entered into and was possessed thereof for the residue of the same term; that the said Mary Grubb, by indenture of demise, bearing date the 26th March, in the year 1748, did demise the said lands to John Allen for the term of 399 years, and that said John **[482]** Allen entered and was possessed of said lands for the said last-mentioned term; and that the interest in the said last-mentioned lease was, in and previous to the year 1779, vested by mesne assignment in Benjamin Batt for so many years of the said term as he should live, with the remainder to his daughter, Elizabeth Batt, for the residue of the said term; that upon the marriage of the said Elizabeth Batt unto the said Bartholomew Boyd Warburton, (she being then of full age,) the said Benjamin Batt, together with the said Elizabeth, executed the indenture of settlement of the 24th July 1779, which deed was made by and between Benjamin Batt, of New Ross, in the county of Wexford, Esquire, and Elizabeth Batt, spinster, his eldest daughter, of the first part; Bartholomew Boyd Elliott, and the Reverend Robert Alexander, of the second part; and Bartholomew Boyd Warburton, of the third part; and was duly executed by the said Benjamin Batt, Elizabeth Batt, Robert Alexander, and said Bartholomew Boyd Warburton: and whereby, and in consideration of said intended marriage, the said Benjamin Batt and Elizabeth Batt assigned the said lands and their respective terms and interests therein to Bartholomew Boyd Elliott and Robert Alexander for the residue of the demised term therein, in trust to permit the said Benjamin Batt to take and receive the rents and profits of the said lands during the term of his natural life, and after his decease to permit the said Bartholomew Boyd Warburton to receive the said rents and profits during his natural life, and in case the said Elizabeth, his intended wife, should survive her said intended husband, then after his decease to permit the said Elizabeth to receive the rents and profits during her natural life, and after the decease **[483]** of the said Bartholomew Boyd Warburton, and Elizabeth, his intended wife, in trust to permit the first son of the said marriage to receive the said rents and profits until he should arrive at the age of 21 years, and then to convey said lands to said first son absolutely; and in case there should be no issue of the said marriage, then the said lands and the interest therein should become the sole property of the survivor of them, the said Bartholomew Boyd Warburton and Elizabeth his intended wife: and the Jurors aforesaid further find, that said deed was not registered; and that after the execution of the said settlement the said marriage was solemnized, and said Benjamin Batt during his life received the rents and profits of the said lands under the said deed, and after his death the said Bartholomew Boyd Warburton received the rents and profits during his life, and being in possession thereof on the 26th day of May 1800, by indenture of lease, dated the same day and which indenture was duly registered in the office for registering deeds on the 10th June 1800, the said Bartholomew Boyd Warburton demised the same to George Keogh and Thomas Keogh for the term of years mentioned in the said lease which is still unexpired, at and under the yearly rent of £345 19s., being at the rate of 16s. per acre; that the said George and Thomas Keogh entered and were possessed of the said term under the said lease; and afterwards, by indenture of assignment bearing date the 9th day of April 1813, in consideration of the sum of £3000, paid to them by George Ivie and Henry Ivie, conveyed their interests in said lease to said George Ivie and Henry Ivie, two of the lessors of the Plaintiff, who entered and were possessed thereunder until the time of the death of the said **[484]** Bartholomew Boyd Warburton on the 6th February 1823, leaving the said Elizabeth, his wife, surviving him, when the Defendant, Elizabeth, his widow, entered upon the said lands, claiming under said settlement of the year 1779, and brought her ejectment to recover possession of the same in the name of her trustee named in the said deed of 1779, and having obtained judgment thereon, executed her *habere* thereunder, on the 22d day of January 1825: and said Jurors further find, that the said George and Henry Ivie afterwards entered upon the said lands, and demised the same unto the said James Loveland for the said term in the said declaration in ejectment mentioned; by virtue of which demise the said Plaintiff entered thereupon, and was possessed for the said term so to him demised until the said Defendant Elizabeth

entered and ousted the said Plaintiff therefrom as therein mentioned; but whether, etc. etc. etc."

On this verdict judgment was given in June 1825 for the Ivies, which judgment was in June 1828 affirmed by the Court of Exchequer Chamber, the Judges being equally divided; and from that judgment Mrs. Warburton brought her writ of error returnable in Parliament; and it was contended that the judgment ought to be reversed for the following among other reasons:

1st. Because by the marriage-settlement of the 24th of July 1779, the legal estate in the premises mentioned in the declaration was transferred to Bartholomew Boyd Elliott and Robert Alexander, the trustees of that settlement; and Bartholomew Boyd Warburton, at the time of executing the indenture of lease of the 26th May 1800, was only tenant-at-will to the said trustees, and was therefore unable to transfer **[485]** any legal estate in the premises to George Keogh and Thomas Keogh, from whom the Defendant in error, James Loveland, derives his title.

2d. Because although the said marriage-settlement was not registered according to the provisions of the Irish statute, 6th Anne, c. 2, yet such deed of settlement was good and effectual to vest the legal estate in the said trustees as to the said lands, and to bind the parties thereto; and prevented said Bartholomew Boyd Warburton from acquiring in his marital right, on his marriage, any estate in the premises in question, he could only take under or by virtue of such settlement; and for the reason above stated, he did not take under such settlement any legal estate capable of being conveyed to a purchaser from him.

3d. Because a deed, invalid for want of title in the party conveying at the time of execution, cannot be made valid, or acquire any effect by subsequent registration.

4th. Because even supposing that the said Bartholomew Boyd Warburton took such an estate in the said premises as enabled him to convey, by the said lease of the 26th May 1800, a legal interest therein to the said George Keogh and Thomas Keogh, and their assigns, for the term of his own interest in the said premises, yet such interest did not extend beyond the period of his own life, and determined therewith; and the legal interest, if any, conveyed by the said lease also expired at his death: nor could the registration of such lease operate so as to give it any more extended effect, or to bind or affect the legal estate of the trustee of the said marriage settlement subsequently to the death of the said Bartholomew Boyd Warburton.

For the Ivies it was contended, that the judgment **[486]** ought to be affirmed for the following among other reasons:

1st. Because the settlement of the 24th July 1779 was not registered, and must, under the true construction of the 6th Anne, c. 2, be considered to be fraudulent and void against the lease of 26th May 1800, which was duly registered according to the provisions of that Act.

2d. Because if the settlement of 1779 had never been executed, Bartholomew Boyd Warburton would, in right of his wife, have become possessed of said lands for the residue of said term of years, and would have had full power to make the said lease of 1800; and if that settlement, not having been registered, is fraudulent and void against said lease which was registered, there is nothing to invalidate the said lease.

3d. Because the Defendants in error are purchasers for valuable consideration, and as such within the meaning and policy of the 6th of Anne, which was passed for the security of such purchasers.

4th. Because the object of the 6th of Anne was, that all deeds relating to lands in Ireland should be registered, in order that persons contracting for or purchasing lands might, by a search in the registry, have notice of all conveyances affecting same; and because that object will be defeated if the secret and unregistered settlement of 1779, of which the Defendants in error had no notice, can be set up against them.

(*Vide Latouche* v. *Dunsany* 1 Schol. and Lef. 154.)

The cause was heard in the House of Lords in March 1831, Lord Tenterden presiding as Speaker, and the Judges attending; and on the 14th of that **[487]** month and year, Lord Tenterden proposed the questions for the opinion of the Judges. On the 23d of February 1832, the Judges attended, when their unanimous opinion was read by Lord Chief Justice Tindal, of which, by his Lordship's favour, we have been furnished with an authentic and accurate transcript (Tindal, Ld. Ch. J. C. P. 23 Feb. 1832). It is as follows:

My Lords: The statement which this House has been pleased to submit to the consideration of His Majesty's Judges is this: An unmarried woman being possessed of land in Ireland for a long term of years, and about to marry, assigned the term by a deed, executed also by the intended husband, to trustees, upon trust to permit the husband after marriage to receive the rents for life, then to the wife for life, then the first son of the marriage, if any, with remainder over. The marriage took effect; the husband entered into possession, and received the rents and profits, and then made a lease for years for part of the term, rendering rent; the lessees entered and received the rents and profits, and then assigned the lease for a valuable consideration.

The marriage settlement was not registered; the lease by the husband was registered; the assignment of the lease is supposed not to have been registered. The wife, surviving her husband, obtained possession of the lands; the assignees of the lease brought an ejectment against her to recover the possession.

Upon this statement your Lordship's have been pleased to put the following questions; regard being had to the true construction of the Irish Register Act, 6 Anne, c. 2.

1st. Which title is to be preferred, that of the assignees of the lease, or of the widow, or the trustees under the settlement?

[488] 2d. Supposing the assignment of the lease not to have been registered, will the construction be the same?

Upon the first of these questions, the Judges who have heard the argument at your Lordship's bar, are of opinion, that regard being had to the true construction of the Irish Register Act, the title of the assignees of the lease, under the circumstances above stated, is to be preferred to that of the widow, and also to that of the trustees under the settlement; and upon the second question, they are of opinion, that supposing the assignment of the lease not to have been registered, the construction of the statute remains the same.

Upon the facts of this case, Mr. Warburton, who granted the lease of 1800, was at the time of granting it in possession of the premises; and as the marriage settlement of 1779 was never put upon the register, he must have appeared to the public, and amongst the rest to the lessees taking under the lease of 1800, to be in possession of the premises either in his own right or in right of his wife, in either of which cases he would have had the undoubted right to grant a valid term by the lease of 1800, unless the unregistered settlement of 1779 stands in the way. Now it is not disputed on the part of the Plaintiff in error, that if Mr. Warburton had been the party who conveyed the term by the unregistered settlement of 1779, and had afterwards made the lease which was registered, such lessees, being purchasers for a valuable consideration, might have availed themselves of the fifth section of the Registry Act, and that the prior settlement must have been held fraudulent and void as against the lease. Such a case is admitted to fall within the letter as well as the spirit of the Act. But it is contended by the Plaintiff in error, that the operation of the Irish Registry Act extends no further, but is confined to **[489]** cases in which both the earlier and the subsequent conveyances are the deeds of the same grantor; and whether such is the case, or on the contrary the Act extends to give a preference to the subsequent deed when registered against the prior unregistered deed, notwithstanding the same was executed by a former owner of the estate, is, in substance, the question now proposed for our consideration.

No case can be found either upon the English Registry Acts, or upon the Irish Act now under consideration, in which this precise question has been decided by a Court of Law. It must therefore be determined upon principle, not upon authority; and the only principle of decision that is applicable to it is the fair construction of the statute itself, to be made out by a careful examination of the terms in which it is framed, and by a reference in all cases where a doubt arises to the object which the Legislature had in view when the statute was passed. Where the language of the Act is clear and explicit, we must give effect to it, whatever may be the consequences; for in that case the words of the statute speak the intention of the Legislature. If in any case a doubt arises upon the words themselves, we must endeavour to solve that doubt by discovering the object which the Legislature intended to accomplish by passing the Act.

And although it would be impossible to consider a question to be free from diffi-

culty where opinions have been formed upon it in direct contradiction to each other, and each opinion has been supported with such acuteness and ability by the very learned Judges of the several Courts below, before which it has been agitated; yet we have, upon consideration, come to the conclusion, that both the closer interpretation of the words of the statute, and the construction which, at the [490] same time, most suppresses the mischief the Legislature had in view, and most advances the remedy which is held forth, warrant us in the opinion that the registered lease of 1800 is to be preferred to the unregistered marriage settlement of 1779; and that the latter, in so far as its provisions are inconsistent with the validity of the lease, is to be held altogether void.

The question appears to turn almost entirely on the construction of the fifth section of the statute, which declares in what cases, and under what circumstances, an unregistered deed shall be void. For as to the fourth section, to which considerable importance has been attached in the course of the argument, it appears to us to be confined to the case of priority of registered deeds as between themselves, and to have very little, if any, bearing upon the question immediately under discussion. Before, however, we come to the more particular consideration of the fifth section, it will be advisable to look, generally, at the preamble of the statute, and the other clauses which precede the fifth, in order that we may ascertain from the Act itself the object and general intention of the Legislature in passing it; for such intention is to be the guide of our course in case any difficulty should arise in the construction of a particular clause.

This statute, which was passed by the Irish Parliament in the sixth year of Queen Anne, is intituled, "An Act for the public Registering of *all* Deeds, Conveyances and Wills, that shall be made of any lands, tenements or hereditaments;" it begins by stating its object to be, "for securing purchasers, preventing forgeries and fraudulent gifts and conveyances of lands, tenements and hereditaments, which have been frequently practised in this kingdom, especially by papists, to the great prejudice of the [491] protestant interest thereof, and for settling and establishing a certain method, with proper rules and directions, for registering a memorial of all deeds and conveyances which, from and after the 25th day of March 1708, shall be made and executed for or concerning any honours, etc. in this kingdom, and of all wills and devises in writing, etc.;" and it then proceeds, in the first section, to enact, that a public office for registering memorials of deeds and conveyances, wills and devises, shall be established and kept in the city of Dublin, to be managed and executed by a fit and able person, etc.

The first section therefore of the Act is framed in the most general and comprehensive terms, comprising "all deeds and conveyances for or concerning any lands," without restriction or qualification as to the parties by whom such deeds or conveyances were executed, or otherwise; showing the intention of the Legislature to have been to provide, in the place and stead of the ancient and more public, and notorious, mode of transferring landed property, the means of discovering all transfers, with equal or greater certainty, by referring to a public register, upon the face of which it was intended they should all be found. The third section directs that a memorial of "all deeds and conveyances which, from and after the 25th day of March 1708, shall be made for, or concerning, or whereby, any honours, etc. within this kingdom may be anyways affected, may, at the election of the party or parties concerned, be registered in such manner as is hereinafter directed."

There is nothing, therefore, in the language of this third section which restrains the generality of the first. It is still a memorial of all deeds and conveyances which the Legislature contemplates; although it is left open to [492] the discretion of the parties to whom the conveyances are made, whether they will avail themselves of the protection of the Act, or incur the consequences to which they become liable by neglecting its provisions.

What those consequences are, the fourth and fifth sections proceed to declare. For by the fourth section it is enacted, "that every such deed or conveyance a memorial whereof shall be duly registered, shall be deemed and taken as good and effectual both in law and equity, according to the priority of time of registering such memorial, according to the right, title and interest of the person or persons so conveying such honours, etc., against all and every other deed, conveyance or disposition of the honours, etc., comprised or contained in any such memorial as aforesaid."

This clause is framed for the purpose of regulating the priorities of registered deeds and conveyances as between themselves, and is expressed in the same general terms as the preceding.

It begins by enacting "that every such deed or conveyance" that is, every deed or conveyance executed after the 25th of March 1708, affecting lands, etc. in Ireland; an expression unlimited and unqualified by any reference to the persons executing such deeds; neither requiring nor appearing to require that the party who executes must claim under a registered conveyance, or importing any other restriction; the statute then enacts "that it shall be good and sufficient, according to the priority of time of registering such memorial, against all and every deed, conveyance or disposition of the honours, etc.;" words, equally unlimited and unqualified by any consideration whether the person executing such prior deeds was or was not the same person who executed the second, whether the person executing the second deed claims under a **[493]** registered conveyance, whether he is seised or possessed *proprio jure*, or is in under a title which has come to him by act or operation of law.

We do not see how we can give full force to the expression used by the Legislature in this section unless we adopt a construction as large as the language itself. If it had been the intention of the Legislature that the priority between deeds should take place according to the time of their registration only where both the first and the second deed were executed by the same person, it surely would have been easy to have expressed this by words to that effect; but there is no expression in the fourth section which imports such a restriction, and we think we should be legislating, not interpreting, if we were of our own authority to imply such words. The fifth section, the section upon which the present questions turn, states the effect of registration as between unregistered and registered deeds in the following terms: "Every deed or conveyance not registered of all or any of the honours, etc. comprised or contained in such a deed or conveyance, a memorial whereof shall be registered in pursuance of this Act, shall be deemed and adjudged as fraudulent and void, not only against such a deed or conveyance registered as aforesaid, but likewise against all and every creditor and creditors, by judgment, recognizance, statute merchant or of the staple, confessed, acknowledged or entered into as for or concerning all or any of the honours, etc. contained or expressed in such memorial registered as aforesaid." Now in this clause also as in the former the expression is general, "every deed," and is altogether unqualified by any reference to the description of the party by whom the unregistered deed is executed, whether he be the same who executed the registered deed or another and a different person. The **[494]** same observation therefore occurs upon the fifth which has already been made upon the fourth section, namely, if the Legislature intended the unregistered deed to be void against a registered deed in such case only where both were executed by the same party, so important a qualification would scarcely have been omitted in the Act itself, or left to be supplied by interpretation in a court of law.

From this general view, therefore, both of the preamble and of the five first clauses of the statute, we think it cannot be doubted but that the statute meant to afford an effectual remedy against the mischief arising to purchasers for a valuable consideration from the subsequent discovery of secret or concealed conveyances, or secret or concealed charges upon the estate. Now it is obvious that no more effectual remedy can be devised than by requiring that every deed by which any interests in lands or tenements is transferred, or any charge created thereon, shall be put upon the register, under the peril that if it is not found thereon, the subsequent purchaser for a valuable consideration, and without notice, shall gain the priority over the former conveyance by the earlier registration of his subsequent deed.

If the words of the fifth section will bear this construction, it will be preferred to that which limits the operation of the clause to those cases only where both the conveyances are the deeds of the same man. For in the latter case the remedy is obviously incomplete. The mischief to the purchasers is the same whether the secret conveyance or charge arises from the deed of his immediate grantor or that of a former owner of the estate. If the words of the statute will comprehend both, why is he to be protected against a secret deed in the one case and not in the other? What just ground **[495]** of complaint can be urged against such a construction by the grantee

under the unregistered deed executed by a former owner of the estate? The deed, if it was a real and a *bona fide* transaction, must have been or ought to have been in his custody or power from the time of its delivery. What cause can be assigned for its non-appearance upon the register, except either collusion with the grantor or carelessness and neglect in himself, or mere accident. In neither case can he complain of the construction of the statute, by which his own fraud, or his own want of due caution, or an accident which befel himself, is not allowed to operate to the prejudice of the rights of the more diligent purchaser. Suppose a man to settle his property, upon his youngest son's marriage, on himself for life, remainder to his eldest son for life, remainder to the younger son, his wife and children, in strict settlement, remainder over in fee; the settlement is not registered, and the settlor dies, his eldest son enters, and supposing himself to have the fee, conveys to a purchaser for a valuable consideration, shall it be allowed that the younger son, his widow or his children, shall enter and evict the purchaser? Or suppose a like settlement, and a like concealment, and the father devises all his lands in trust to sell and to apply the money to debts and portions, or other purposes: after the estate is sold, and the money distributed, can the construction of this Act be such that the purchaser shall be turned out by the claimants under this settlement? Or in the particular case now before us, where Mrs. Warburton before her marriage might have registered the deed, and the trustees after the marriage were bound in duty to do so if the settlement came to their knowledge, can the proper construction of this Act allow Mrs. Warburton to avail herself of her own care-**[496]**-lessness, or of the breach of duty of her trustees, by establishing her unregistered deed against a registered lease made by her husband upon no other ground than that the settlement and the lease were not conveyances by the same person? If there was no provision in the Act to prevent this inconvenience, it must be submitted to through necessity; but if there are words in the Act capable of such an interpretation as would prevent the inconvenience, we think ourselves bound upon every consideration to give them such an effect. How much more then where the words themselves and their strict grammatical construction appear to require such a sense? That in all the cases above supposed a great injustice would be worked if the Act supplied no remedy, no one can deny; it appears to us that to allow the Act to authorize such mischief would not only be injustice, but would be against law. The language of the Act throughout, and more particularly in the fifth section, seems to establish this to have been its leading object, that as far as deeds were concerned the register should give complete information, and that any necessity of looking further for deeds than into the register itself should be superseded; and it is manifest that no construction of the Act is so well calculated to carry into effect this its avowed object as that which forces all transfers and dispositions of every kind, and by whomsoever made, to be put upon the face of the register, so as to be open to the inspection of all parties who may at any time claim an interest therein. But the general rules of construction which have been established from the earliest times require a large and liberal interpretation of any provision made for the suppression of fraud. In Heydon's Case, 3 Rep. 7, the Barons of the Exchequer resolved, that the construction of the statute then under consideration before them **[497]** must be made, "by inquiring what was the mischief and defect against which the common law did not provide? what remedy the Parliament had appointed to cure the disease of the common wealth? and what was the true reason of the remedy?" and the observation which follows in the Report is one that ought never to be lost sight of in any case, and is peculiarly applicable to the present, namely, "that the office of all Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." This principle of construction has always been adopted by courts of justice. Thus where the statute of Marlbridge, c. 6, provides that a feoffment to the heir to defraud the lord of ward, etc. shall be void, the statute is held not to be confined to the case of a feoffment, but to extend to a grant, fine, recovery, lease and release, confirmation, or other conveyance. Thus again, where the statute of Fraudulent Gifts, 37 Eliz., c. 4, enacts, that "every conveyance of any lands, etc. for the intent and purpose to defeat and deceive such persons as have purchased or shall purchase the same lands, shall be deemed only

against such purchaser to be void, frustrate and of none effect;" it was resolved in Burrel's Case, 6 Co. 72, that the remedy was not confined to cases where the first and second conveyances were made by the same person, but that "if the father makes a lease by fraud and covin of his land, to defraud others to whom he shall demise or sell it (as all fraudulent leases shall be so intended) and before the father sells, or demises it, he dies, and the son, knowing or not knowing of the said lease, sells the **[498]** land on good consideration, in that case the vendee shall avoid that lease by the said Act:" and it is afterwards observed, "it is not necessary that he who sells the land should make the former fraudulent estate or incumbrance, but be the estate, etc. fraudulent, whosoever makes it, the purchaser shall avoid such fraudulent estate;" and Lord Coke adds to his report of the case, "that when he acquainted Popham, C. J. with that resolution, he allowed well of it, and said it was well done to construe the said Act in suppression of fraud." The decision in Burrel's case, which is last referred to, appears highly important in a double point of view: in the first place, as confirming and fortifying the general rule of construction above laid down; and in the next, as having a direct bearing and application to the proper construction of the fifth section of the Irish Registry Act. For the Act against fraudulent conveyances and the Irish Registry Act have the same object in view. The mischiefs to be remedied in both are to a great degree the same, namely, the frauds practised by grantors against purchasers for value: the remedy applied by both is the same also, namely, the making the former deed void against the latter: and between the terms used by the Legislature in each of the clauses by which the former deed is avoided there is almost an exact and complete agreement. When, therefore, we find the Judges deciding, in the case under the statute of Eliz., that the statute shall apply although the fraudulent estate and the *bona fide* lease are not made by the same person, it affords the strongest authority that can be furnished by analogy, that the same ought to be the construction of the clause now under discussion. It has been urged, in answer to this construction of the fifth section, that it is not to be taken by itself alone, but in conjunction with the fourth sec-**[499]**-tion, of which it is contended that one object was to control and qualify the operation of the next following clause. And it is further urged, that as the fourth section, in declaring the effect and operation of registered conveyances, *inter se*, gives efficacy to the first registered deed in preference to the second, not absolutely, but only "according to the right, title and interest of the person conveying," a similar restriction must be understood to be imported into the fifth section also, and that the enactment which avoids altogether the prior unregistered as against the subsequent deed which is put upon the register, must be understood with this tacit restriction, "according to the right, title and interest of the grantor in the second deed." The meaning of those restrictive words in the fourth section appears to be "according to what *would have been* the right, title and interest of the person making the second conveyance had there been no deed but what appears upon the register." For unless this be the meaning of those words in the fourth section, that clause of the statute affords no protection at all. The clause, therefore, so understood, enacts in effect, that every man who first registers his conveyance, where there is no other objection to the grantor's right to convey except a prior conveyance made by himself and unregistered, shall be preferred to the man who registers at a subsequent time the conveyance so made to him. This construction, on the one hand, excludes from the protection of the fourth section the grantee who has registered a conveyance made to him by a perfect stranger to the estate; and on the other hand includes within its protection, as between two grantees, that one who first registers his conveyance, made by the owner of the estates. To apply which construction to the facts of the present case, the husband, but for the unre-**[500]**-gistered marriage settlement, would have had the right and title to have made the lease of 1800. For when he married, the residue of the term of 999 years would have belonged to the wife's father for life, remainder to the wife. Now when the father died, (as he did before the making of the lease of 1800), the term would have vested in the husband in right of his wife, with full power in him alone to dispose of it. At the time therefore that the lease of 1800 was made, it would have been a good and valid lease but for the unregistered settlement of 1779. The case therefore of these lessees, if there had been a subsequent registration of the marriage settlement, would have been argued upon the fourth section, and upon that section the lessees

would, as it appears to us, have been entitled to the preference before any who claim under the marriage settlement; but it is urged that the fifth section is to be construed as if subject to the same condition. Even admitting such should be the case, and incorporating that condition into the fifth section, it would still seem that the unregistered settlement is to be held void against the registered lease, the latter being a lease granted by a person who would in all other respects, except so far as relates to the prior unregistered settlement, have had " right and title " to grant the lease. But after all, why is the clear intelligent language of the fifth section to be controlled by the more ambiguous language of the fourth? No rule of construction can require that, when the words of one part of a statute convey a clear meaning according to their strict grammatical construction, a meaning which best " advances the remedy and suppresses the mischief " aimed at by the Legislature, it shall be necessary to introduce another part of the statute which speaks with less perspicuity, and of which the words may be capable of such construction **[501]** as by possibility to diminish the efficacy of the other provisions of the Act.

It has been further argued, that the effect of the marriage settlement was to prevent the husband from having any right to grant the lease of 1800 at the time it was made, for that the wife's right was effectually conveyed as between her husband and herself by the deed of 1779; that she had no interest in her at the time she married; that she could therefore pass no interest to her husband by the marriage; that the husband consequently never had any right, and therefore could convey none to the lessee. Now it may be admitted, that as against the husband, who was party to the deed of 1779, that deed was valid; it may be admitted also, that he could not of right exercise any power over the property inconsistent with that deed; but as by the non-registration of that deed the grantees suffered him, as to the world at large, to have the appearance of right, neither they, nor any claiming under them, are at liberty to set up the deed in opposition to the persons who have been deluded by the appearance of right in the husband. This argument therefore, which would be good against the husband himself, cannot be heard from the parties claiming under the settlement against his grantee for a valuable consideration.

It is further urged in argument, that the Irish Registry Act never intended the register to contain a perfect history of the title, for that devises are not required to be registered by that Act, and therefore the conveyance by the heir, although registered, may always be set aside by the devisee claiming under a will concealed or subsequently discovered. It must be admitted that such is the necessary construction of the Act, and it is to be regretted that it is defective in that particular. But surely that defect affords no argument for so construing **[502]** it in another of its provisions as to make it inefficacious against a former unregistered conveyance. If the Act does not go far enough, at least the interpretation of the Court of Law should make it perfect as far as its enactments do extend.

One objection taken in argument to the right of the Plaintiff below to recover in ejectment has been, that she takes no legal interest in the premises. It has been asked to whom does the rent reserved by this lease belong, and by whom could it be recovered? It should be observed, that the same difficulty would have occurred, and the same question might have arisen, had both the deeds been executed by the Plaintiff in error, and had the first deed been for any other purposes and without any trust in favour of the wife. The first deed, the unregistered deed, would, as between her and the trustees, have effectually vested all her interest in the trustees, and she would have had no right or title or interest in herself: she would have nothing *of her own* to convey: and though her conveyance would by force of the Registry Act have passed a good and valid legal estate to her lessee, she never would have been capable of taking the rent reserved upon it to her own use. How the rent would have been recoverable in either case it is not necessary now to say; it is sufficient, that as against the unregistered settlement the lease conveyed the legal interest to the lessee.

Upon the whole, therefore, upon the first question submitted to us, we think the title of the assignees of the lease is to be preferred to that of the widow or that of the trustees under the settlement.

Upon the second question proposed by your Lordships, after the full discussion of the principle on which we have arrived at the former opinion, it will be sufficient to say—We think the neglect to register the assignment **[503]** of the lease does not

invalidate the claim of the assignees, because the unregistered assignment passed the interest in the lease as between the lessee and the assignee, and there is no conflicting claimant under a registered deed.

Lord Tenterden expressed his perfect concurrence in the opinions thus delivered, and moved the judgment of the House in conformity to it.

Judgment of the Court below affirmed (23 Feb. 1832).