

Simeon Hays. A few days afterwards, to wit, on the 9th of the same month, Charlotte Henry, conveyed the same property to Simeon Hays, upon the trusts in said deed expressed. These two deeds were enrolled on the same day, and the inference is a very natural and fair one, that they are parts and parcels of the same transaction; and, were intended to consummate a purpose contemplated when the purchase was made. That purpose, I am fully convinced, was to deprive the complainant, the widow of Hays, of her share of her husband's estate. This purpose, there is no doubt, could have been accomplished by an absolute and unconditional alienation of the property by sale or gift; and, although such alienation was made with the intent imputed to this act, it would not vitiate it, provided there was a transfer of the possession as well as the title, and no reservation, whatever, to the husband.

But, in this case, Hays did not part with the possession. On the contrary, Mr. Coates stated, that Hays bought the property in question, lived in it, and died in it.

There is, moreover, in the assignment of the lease by Charlotte Henry to Hays, a provision which seems to have been designed to secure him in the possession of the property during his life. The language of the covenant is, "that he shall peaceably and quietly have, hold, use, occupy, possess and enjoy, the said piece of ground and premises," &c., "without the let, suit, molestation, interruption, eviction or disturbance of the said Charlotte Henry," &c.

It is true, in the declaration of the trust, it is said, that the property shall be held by him, for the sole use and benefit of the said Charlotte Henry, during her life, &c., and after her death, in trust, for the benefit of her children, with a limitation over in the event of their death without issue, for the use of the children of Hays by the complainant; and, therefore, it is contended, that he took no beneficial interest under the assignment, being a mere depository of the naked legal title. But still, the legal title was conveyed to Hays, with a covenant that he should have possession, and the proof shows, that he did in fact, retain the possession and use down to the period of his death in 1847.