

COURT OF ERRORS AND APPEALS.

Between

HORACE LIPPINCOTT,

Appellant,

and

KETURAH M. EVENS, et als.,

Respondents.

} On Appeal, &c.

Alfred Hugg, for appellant

POINTS MADE BY COMPLAINANT'S COUNSEL.

(I.

The quality of the estate of Keturah M. Evans in the estate set up in the joint answer must be determined by the answer itself, as the defendants cannot claim any estate not set up. The defendants will be bound by the construction set up in the answer.—Moores vs. Moores, 1 C. E. Gr. 275; 1 Russell & Mylne, 527; 1 Barb. Ch. Pr., 137; Story's Equity Pl., § ~~571~~ 697

(II.

The trust which proceeded from the testator was destroyed by the compliance of the trustee with the order of the beneficiary to invest the *corpus* of the trust fund in the farm.—Perry on Trusts, § 920 and 921; Walker vs. Beal, 106 Mass., 110. Halsted vs. Davidson, 2 Stock., 290; Bucon vs. Bonham, 12 C. E. Gr., 204; Barker vs. Greenwood, 4 Mees. and W., 421, 429; Adams vs. Adams 9 Jur., 303; Bellinger vs. Schaffer, 2 Sandf. Ch., (N. Y.,) 293. Hardenberg v. Blair 2 Stew. 645; Stone v. Brown 5 Stew. 118. Woodruff v. Johnson & Hals. Ch. 129; The New Parish in Exeter v. Edinome 17 H. 232; Ramsey v. March 2 McCord 252; 2 Mees. & W. 59 — 19.

III.

The farm cannot be deemed to be held in trust at all because the *habendum* in the deed as pleaded gives Mrs. Evens the legal title under the statute of uses.—Yeo vs. Mercereau, 3 Harr. 400; Perry on Trusts, §5 and §304; Shute vs. Harder, 1 Yerg. (Tenn.), 2; Jackson vs. Bateman, 2 Wend. 570; Jackson vs. Walker, 4 Wend., 462.

IV.

If the farm can be deemed to be held in trust at all, the trust proceeded from the debtor, Keturah, herself.—4 Kent, 319 and 536, (original paging); 2 Redfield on Wills, 277; Craig vs. Craig, 3 Barb., Ch. 77. *Bradford v. Street* 16 Ves. 135; *Stalstead v. Dawson* 2 Stock 290; *Cremar v. Broad* 8 Cr. 508; *Price v. Sisson* 2 Beas. 168.

Equity will most willingly aid in enforcing the application of the beneficiary interest of a *cestui que trust* to the security and payment of his debts.—Ryder vs. Sisson, 7 R. I., 341; Degraw vs. Claussen, 11 Paige, 140. *Hallett v. Thompson* 5 Paige 588

VI.

To change a trust of personal to real estate and *vice versa*, the Court of Chancery must be consulted.—Quick vs. Fisher, 4 Hal. Ch., 674, 778; S. C., 1 Stock, 802; *Vanners vs. Jacobus*, 2 C. B. Gr., 152; *Gen. vs. Moore*, 4 C. E. Gr., 503; in the matter of Eunice Salisbury, 3 Johns, Ch., 347. *Story Eq. juris.* § 1267 § 978.

ALFRED HUGG,

Of Counsel with Appellant.

The trust cannot be deemed to be held in trust at all because the
 Anderson in the deed as placed gives Mrs Evans the legal title
 under the statute of 1800—Yor vs Morrison 3 Harr 400; Torr
 on Trusts 25 and 2304; Sims vs Hunter 1 York (Torr)
 Jackson vs Bateman 2 W and 579; Jackson vs Walker 4 Wood

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If the trust can be deemed to be held in trust at all, the trust
 proceeds from the estate of Robert Keane, himself—4 Kent 319 and
 232 (containing passage); 2 Bedford on Wills 277; Ogle vs Ogle
 3 L. R. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Trusts will most willingly aid in enforcing the application of
 the beneficiary interest of a trust over to the security and
 payment of his debt—Ryder vs Dixon 7 E. L. 341; Dwyer vs
 Clarkson 11 F. & C. 140; Holwell v. Chapman 2 G. & P. 280

To change a trust of personal to real estate and vice versa the
 Court of Chancery must be consulted—Tibbitts vs Fisher 4 Hal.
 Ch. 574 754; 2 L. J. 1004 802; ~~Wynn vs Wynn 2 L. J. 1004 802~~
 Gwyn vs Moore 4 G. E. Gr. 503; in the matter of Eames
 2 Chancery 2 Johns Ch. 547; ~~Blount vs King 15 G. 2 1004~~
 APPENDIX
 Of Council with Appendix

