

Walker J. The widow and heirs of James Her-
rington declared filed their bill in the same cir-
cuit Court, against the Board of Supervisors and
others as officers and agents of the County to in-
join a sale and compel a conveyance of lots
9 and 10 in Block 52 in the town of Geneva. It
appears that the lots had been for many years used
for County purposes and on which a Court
house jail and records office had been erected.
The bill alleges that the County holds the property
in trust for complainants, and seeks to have
the trust executed by a conveyance.

^{The bill alleges}
~~It appears~~ that one Haight in the year 1835 settled
on the quarter of land of which the lots in controversy
are a part, and that the land was then un-
surveyed; that he sold his claim to Herrington the
ancestor of complainants who went into posses-
sion and resided on it until his death which
occurred in 1839. After his death his widow and
heirs continued to reside on a portion of the
tract. In June 1836 Herrington sold an undiv-
ided three fourths of his claim excepting two
acres on which his house stood, to one Hamil-
ton, who afterwards sold different portions to vari-
ous persons. In June 1836, the commissioners
appointed for the purpose located the County seat
on this claim that Herrington and Hamilton
laid out the village of Geneva on this claim.

and recorded the plat. Proceedings were instituted in the Kane Circuit Court for the purpose of obtaining partition among the several claimants of the property. This proceeding was commenced at the May term 1840 of the circuit court, and Daniels Hamilton and Merdner were plaintiffs and Huntington was defendant. From these proceedings it appears that on the 3rd of June 1838 these parties entered into an arbitration bond, by which King, Hibbard and Dunham were chosen to "arbitrate, award, order, appraise, divide and set apart and determine" the parts of the town of Geneva to which the parties and those claiming under them were entitled. Being two acres and certain other portions of the property including that in controversy was excluded from the submission and reserved to Huntington.

In 1840 the lands in that section of the state having been surveyed, it was found that the tract upon which the County seat had been located was the S E q^r of Sec 3. T. 39. R. 8. This land was purchased by the County in 1841, the complainants furnishing their share, and other persons interested, the residue of the purchase money, they holding the equitable and the County the legal title to the quarter. The other complainants conveyed their title to the lots in controversy to Augustus H. Huntington one of the complainants for whose benefit the suit is prosecuted.

The answer denies that complainants have a presumption right. As to Heringtons death and the kinship of complainants. Insists that the County was not bound by the arbitration proceedings as they were void; because the County nor its grantor were parties to it; because the government there owned the land. As to the laying out the town, and the purchase by the County in 1841, but denies that complainants then claimed any interest in the land or furnished any portion of the purchase money that by a general consent of the citizens who furnished the purchase money to enter the land there was conveyed to Mrs Herington the interest which her husband claimed in the property in 1838 on her paying the cost and expenses, pursuant to which understanding the County has from time to time conveyed to her or to others on her request, ^{her share} all of which had been done prior to 1854.

That in 1837 ~~and~~ a court house and jail were erected on 41 and 43 where they continued until in 1843, at which time owing to the principal settlement of the town being along Hay River and the desire of the citizens for their removal their location was changed. Mrs Herington then occupied Block 53. When it was agreed between her and the County that in lieu of any interest she had in the lots in controversy she should take

lots one and two in block 51 which arrangement was carried into effect, and the County procured to erect the Court house jail and recorder's office on the lots in controversy. That these buildings were used by the County until in 1858 when new County buildings were erected in an other locality to which the County records were removed. That Augustus M. Huntington on the removal of the County records took a lease of the recorder's office for three years at a rent of \$40. per annum conditioned that should the property be sold he would demand possession. That the County owned lots one and two in block 51 in fee and so remained until in 1853 when at the written request of Mrs. Huntington they were conveyed to defendant James Huntington. It is alleged that complainants knew the facts and recognizing the right of their mother to control and dispose of the property, and knew of the conveyances made on her behalf, and to which they never interposed any objection. That James still claims lots 1 & 2 in block 51 and has never offered to reconvey them. The answer relies upon upon an estoppel in pais by the various acts of complainants, also upon possession for over twenty years, and the statements of complainants claim.

It appears that Mrs. Lathill one of the heirs and her husband entered a disclaimer of any

claim to any interest in the land, and the bill was dismissed as to them, by an order of the Court. The evidence also discloses that Herington in his life time sold an interest in ~~some~~ some water power situated on his claim to one Strode and he, by ^a ~~the~~ Mitten ^{contract} ~~agreement~~ ~~and~~ then executed, agreed to advance the money necessary to pay the Government for Herington's fourth of the quarter. Strode afterwards sold his claim to Sterling who obligated himself to pay that amount for the entry of the land, and he testifies that he did pay the necessary sum to Hatcher for the purpose, and the latter swears that he used it in entering the land. Thus it is seen that the money used for the purchase of the Herington interest was due to the estate, and in which the heirs had an equitable interest, and it was applied to the purchase of a claim and improvements ^{land and} made by their father at the time of his death.

And as the money ~~due~~ to which the heirs were equitably entitled was employed in purchasing the ^{land and} improvements ⁱⁿ upon which their father lived at the time of his death they are ^{equitable}

in the money attached to the land,
and as their money paid for the
land, without their consent, they
being minors are incapable in law
of executing the law implied a
trust which resulted in their favor
when the land was purchased "in their
and the County became their trustee.
And this trust was fully recognized
by the County in reference to this
as well as other interests when that
- she was appointed as the agent of
the County to make deeds of conveyance
on behalf of the County so
as to vest in these and other land
officiaries the legal title. And he
supposing that Mr. Huntington had
the legal right to control this in
- trust, at various times made con-
veyances to different persons on her
request, who no doubt thus acquire
- to title unless chargeable with notice
of the equitable interest of the heirs.
The heirs then having become vested
- with this interest as a resulting
trust, the statute of frauds could not
avail ~~as~~ even had it been pleaded
in the pleadings. It has been repeated
- by him that such trusts are not in

- beared within the Statute, but are by
 express trusts resting in parcels ^{and other verbal agreements}
~~being the sale of lands~~ are
 within the purview of the Statute. It
 then follows that these complainants
 were in equity entitled to the portion
 of the lands awarded to Harrington,
 and the lots in controversy are a
 part ^{thereof} unless they have done some
 act which has divested them of their
 title, or which has estopped them
 from its assertion.

Being ~~winners~~ they could not
 those who were winners could not
 be estopped by reason of their fail-
 - ure to give notice to the agents of
 the County that they claimed inter-
 ests in the property whilst the County
 buildings were being erected. In law
 they were not capable of stopping them-
 selves simply by failing to assert
 title. The County being the trustee is
 presumed through its agents to have
 known the character of the title, and
 the record shows they were as the case
 which was noted of record by the
 County Commissioners authorizing
 Hatcher to convey lots one and two
 in block 52 to Mr. Harrington upon
 her filing with him a sufficient

release of all her interest, on the basis
of Herington might have to lots of and
two in Block 52, and ~~that~~ the order states
that it was entered at the request of
Mrs Herington. By this order the
County authorities admit that the
heirs had an interest in the lots
in question, and requires their
agreement to extinguish it before he can
acquire lots one and two. Thus it ap-
pears the County authorities act up
on full information that the heirs
had an interest in these lots, when
they erected these buildings. As hence
they show that a release of that in-
terest was ever acquired from the ^{heirs.}

It is urged that the arbitration was
inoperative as Herington had died be-
fore it was published and became a
matter of record. It does not concern
that it was material that it should
have been binding on the parties at
the time as by long acquiescence
it has acquired such force that the
parties in interest would be held to
its terms, and such would be the ef-
fect of a parole agreement after the
- an acquiescence. Moreover none
of the parties whose interests were af-

fecting by it are now complaining of its terms as provisions. Nor do we see that the County has any right to question the validity of the partition as they had previously recognized the heirs and their mother as having all of the equitable rights that are vested in these lots.

Nor can, as urged by the counsel for appellant, the claim be regarded as barred. Twenty years have not elapsed since all the heirs have come of age, and unless the suit would have been barred had they acted at law, it cannot be held to be barred. If however any portion of the heirs were of age when the County entered into possession and twenty years have elapsed before this suit was brought then the result would be otherwise, ^{as to such heirs.} Where the statute of limitations would bar an action at law, and the matter is litigated in Chancery, the latter tribunal following the analogies of the law in such cases ^{would} hold the claim to be barred, and refuses the relief sought.

We think that the evidence in this recent makes that the County gave or agreed to give lots one and two in

* If A M Harrington was of age, as is con-
-tained, When the lots were exchanged he was
-not have so acted as to be stopped from
-now asserting title. We have seen that the
his mother acts with the property as though
-she held the equitable title or at least
-as though she was the agent fully empow-
-ered by the heirs to sell and dispose of
the property. And if he was of age know-
-ing that his mother was so acting we may
-presume those acting for the County be-
-lieved she had the right to control the equi-
-ty and that by the exchange the County
was vesting the equity to the fee which
it held. Having reason to believe that
the County was thus acquiring the equi-
-ty, and ~~he~~ he knowing that his mother claim-
-ed to have power to release and dispose of
the equity to these lots it became his du-
-ty to assert his claim and thus give no-
-tice to the County agents that they might
have avoided the large outlay incurred in
these improvements. If not under disabili-
ty he should have then ~~so~~ given the notice,
and failing to do so it would be inequita-
-ble to permit him now to assert his title
-And the County takes papers in return the
arrangement made with Mr Harrington it must
have been otherwise no doubt been otherwise.

exchange for lots nine and ten, and
all of complainants who were of age
at that time and assented to the ar-
rangements are stopped from claim-
ing any interest in this property. In-
those who have dealt with lots one
and two as their own as is below-
ing to the ~~est~~ heirs are likewise stop-
ped. It then follows that Mr. Herring-
ton by directing these lots to be con-
veyed to James, and by receiving
the conveyance and appropriating
them to his own use, was estopped from
claiming any right to the lots in
controversy. *

As to whether A. M. Herrington oc-
cupied the recorder's office under a lease
from the County there seems to be con-
flict of testimony. He swears positive-
ly that he did not lease it of the County
and his brother James says he refused
to lease it, but having been ordered
by the board to lease it to his brother,
on terms named in the order, he after-
wards reported that he had leased it as
required. On the other hand Virving and
Brown members of a commission ap-
pointed by the board of supervisors
to confer with him says that he of

per to pay thirty dollars per year for

* In ~~such~~ a case the vicar under the paramount title terminates the former relations existing ^{between} ~~against~~ them. So if the landowner eliminate the vicar ~~per~~ ⁱⁿ and dies the tenant in ejectment the tenant may defeat a recovery by showing the conveyance.

Again a party may estop himself by permitting other persons with his knowledge to ~~purchase~~ and assert an interest to purchase property which he owns and thus to expend their money without notice. In such a case it is held to be a fraud that estops him from afterwards asserting title. In taking this lease there was nothing done which induced the county to expend money as incumbrance, but the county was left in every particular precisely as it was before. Had the county erected buildings afterwards, or had a person purchased of the county on the supposition this lease created an encumbrance in the county, then it would fall within the cases referred to in appellants brief. ~~If however A M Harrington was a person who the building was erected and paid for what claim to the property he has been he might assert, and that M^r Harrington if in~~

sent to pay thirty dollars per year for
 a lease, and it appears that it was up
 on their report that ^{the} order for the lease
 was made. But conceding that he did take
 the lease, it does not follow that he wanted
 he estopped to assert his equitable title. As
 a general rule a tenant is estopped from
 questioning his lord's title, where suit
 for possession, but to this rule there are
 some exceptions. As where the tenant has
 been evicted by a person without a
 legal title and has attorned to the true owner
 as he may when sued by the person from
 whom he leased ~~show the eviction and set~~
 up the title under which the eviction was
 had.

Mrs. Inthill and husband having dis-
 claimed to ~~have~~ any title to the prem-
 ises it follows that the other claim-
 ants would have no right to her sha-
 re, and any decree giving it to them
 would be erroneous. Nor can the other
 complainants claim the interest of
 those who have been estopped from
 claiming any portion of these lots.

It is insisted that one of the heirs
 having died his interest was inher-
 ited by the mother and brothers and
 sisters, and that Mrs. Huntington if in

title to any interest in the property
was intited to an equitable fee in
the share of that child and that the
dece find no such interest. If
we understand the evidence correct-
ly that he died soon after the pa-
ther and before the purchase of the
land, and if so that he had no in-
terest in the land at the time of his
death, and by no known principle
of law could any subsequent interest
be vested in a deceased person.

The decree of the Court below is
~~reversed and~~

Decree reversed.

Supervisors Names

42 yrs 62

6 Herington St

Opinion
by Walker

Record of

Yarny De log.