

stances, it may be that upon the death of Mrs. Myers, and as soon as the parties became tenants in common, that the plaintiffs were entitled to claim the benefit of this purchase from Mrs. Couch. The trust would arise and might be enforced as soon as the relation of cotenant was established by the termination of the estate for the life of Mrs. Myers. But, be this as it may, I find that the law regards the purchase of an incumbrance or outstanding title by the tenant for life as being made for the joint benefit of himself and the remainderman or reversioner, and that he *cannot* acquire it for his exclusive benefit. *Daviess v. Myers*, 13 B. Mon. 513; *Varney v. Stevens*, 22 Me. 333; *Perry, Trusts*, §§ 116, 540. And in *Co. Lit.* §§ 453-267*b*, it is laid down that "a release of a right made to a particular tenant for life, or in tail, shall aid or benefit him or them in the remainder."

My conclusion upon the whole case is that Reed obtained the conveyance from Mrs. Couch for the benefit of himself and the plaintiffs, according to their respective interests in the premises under the deed from John H. Couch, and that, therefore, he took two-ninths of the estate derived from Mrs. Couch in trust for the plaintiffs, and should convey it to them.

The demurrer is overruled.

LINN v. GREEN.

(Circuit Court, D. Colorado. June 23, 1883.)

1. EQUITY—BILL CHARGING FRAUD—INJURY RESULTING.

The rule in equity is that it is not sufficient to charge a fraud simply, but the bill must charge also some injury as the result of the fraud: but this rule does not require any considerable damage, and a slight injury as the result of a fraud will give the party injured the right to bring his action and cancel the contract.

2. SAME—FALSE REPRESENTATIONS AS TO INCUMBRANCE ON REAL ESTATE.

Where a man represents that a piece of real estate is free and clear of incumbrance, when in fact it is subject to incumbrance, and induces another to take it upon the belief that his representations are true, there is an injury, and a bill so charging is sufficient on demurrer.

3. SAME—EXAMINATION OF RECORDS.

In such a case the purchaser has a right to rely upon the representations of the grantor, and is not bound to search the records to find whether they are true or not.

McCrary, J., (*orally*.) This is a bill in chancery, filed to cancel and set aside a contract and conveyance whereby the defendant sold to the complainant an interest in a mine. The bill avers that the defendant falsely and fraudulently represented to the complainant that this property was free and clear of incumbrance, and that he was induced by these representations to purchase it, and to pay for it the sum of \$1,500; that he afterwards discovered that the represen-

tations were false; that the property was not free from incumbrance, but was subject to a judgment lien of some \$700 against the defendant. Thereupon, immediately, as the bill avers, he tendered back a conveyance of the property, and demanded a return of the consideration money. There are various objections to the form of the bill, and some of them, perhaps, may be good, in strictness, if we were to consider them with very great nicety and technicality; but the only matter of substance is the question, whether there is an allegation of injury or damage here which is sufficient to give the complainant a right to relief in equity. He avers, as will be observed, that there was an incumbrance upon this property; that the representation was that it was free and clear from incumbrance. There is no allegation that the incumbrance has been enforced, or that complainant has been obliged to pay it in order to maintain his possession, or anything of that sort. The rule in equity is that it is not sufficient to charge a fraud simply, but you must charge also some injury as the result of the fraud. I think, however, that there is an injury charged here. The rule does not require any considerable damage. A slight injury as the result of a fraud will give the party injured the right to bring his action and cancel the contract; and I think it may be said that where a man represents that a piece of real estate is free and clear of incumbrance, when in fact it is subject to incumbrance, and induces another to take it upon the belief that his representations are true, there is an injury. Real estate is not worth so much when it is incumbered as it is when it is not incumbered. The party who buys real estate upon the belief that it is free and clear from incumbrance, finding afterwards that he has been cheated in that respect, is not bound to keep it. He may return it. It is also insisted that the records were sufficient to give notice to the purchaser of the judgment liens complained of. But the rule in regard to matters of this sort is that the purchaser has a right to rely upon the representations of the grantor, and is not bound to search the records to find whether they are true or not. The demurrer to this bill will be overruled, and the defendant will answer in 60 days.

NICKERSON and others, Trustees, *v.* ATCHISON, T. & S. F. R. Co.

(*Circuit Court, D. Kansas.* November, 1881.)

1. TRUST—EXPENSES OF EXECUTING—DEED CONSTRUED.

Where a large body of land is conveyed to trustees to secure the payment of the principal and interest of a great number of railroad bonds, which have a long time to run before maturity, and the grantor, the railroad company, in the trust deed reserves the right to sell the lands and pay the proceeds of the sales thereof to the trustee, after deducting expenses incurred in executing the trust, it may retain the proper amount for expenses in making the sales, and may also pay the taxes out of the proceeds thereof.