

1810.

Bowly
vs
Lammot

one years; and after the death of his mother, and while he was in the actual seisin and possession of the land, did, on the 17th of April 1787, by deed, convey in trust, &c. to *William Russell*, "all that part of *Chatsworth* which hath not heretofore been granted and conveyed, and whereof the fee simple remained at and before that time in the said *Lux*, a part of which is now under lease to his under tenants," &c. *Russell*, after the execution of the said deed, entered upon and became seized of such part of *Chatsworth*, as could legally pass in virtue of the said deed, to and for the purposes of the deed; and afterwards by deed, dated the 27th of April 1789, conveyed to *Harry Dorsey Gough* parts of *Chatsworth*, described by courses and distances, and containing sixteen and a quarter acres. *Gough*, on the 9th of May 1801, conveyed to *Lammot*, (the defendant,) the parts of *Chatsworth* conveyed to *Gough* by *Russell*. The five acres of land, mentioned and described in the will of *William Lux*, are included within the lines of *Chatsworth*, and are part thereof; and they are truly located by the plaintiff on the plots in the cause, and are the same five acres of land which the plaintiff claims as his pretensions; but the *Rope-Walk* did not occupy or cover more than two or three acres of *Chatsworth*. The two parcels of land, mentioned and described in the deeds from *Lux* to *Russell*, and from *Russell* to *Gough*, and from *Gough* to the defendant, are parts of *Chatsworth*, and include the land for which this ejectment is brought, and are truly located on the plots, and for which the defendant hath taken defence. *Darby Lux*, named in the will, was the testator's eldest brother, and survived him, and is since dead, leaving issue at this time in full life and being. Upon these facts the defendant prayed the opinion of the court, and their direction to the jury, that the lessor of the plaintiff acquired no estate in the five acres of land in the said will mentioned, competent to support this suit. Of which opinion the court, (*Nicholson*, Ch. J. and *Hollingsworth*, A. J.) were, and did so direct the jury. The plaintiff excepted; and the verdict and judgment being against him, he appealed to this court.

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.