

My opinion, therefore, is, that this deed of Catharine Drake to William J. Cole, of the 17th of April, 1843, is a valid deed, both as against the defendant O'Neill, and the heirs-at-law of his wife.

But it is said, that here is a contest about the legal title to certain parcels of property, and that the parties should be referred to the courts of law for its adjudication, and especially that the Court will not, under the circumstances, put in a receiver.

The controversy, however, is not certainly with respect to a portion of the property about the legal title. The title of Catharine Drake to the property conveyed by the deed from William Drake to Mowatt, was an equitable one only, and by her deed to Cole, of the 17th of April, 1843, she conveyed to him, and could convey to him only, that title. Therefore, so far as that property is concerned, Cole, the plaintiff, is but an assignee of the use, and could not assert his title in a court of law. And in view of the great number of tenants, and the endless litigation which might and would probably ensue, if this Court should refuse to take cognizance of the case, the jurisdiction may, in my judgment, be maintained. The injunction, therefore, must be continued, and hence it is indispensably necessary some one should be authorized to receive the rents and profits, as otherwise they would most likely be lost.

The defendants, in their answer, say, they admit they have been in possession of the property by their tenants since the death of Mrs. O'Neill, but the bill does not so allege, and the answers are not evidence of it. This is not a case, therefore, where a receiver is put upon property against the legal title. But it is a case in which the plaintiff shows an equitable title to part of the property, and a legal and equitable title to another part, in which the defendant, upon the case as it now stands, makes out no title, legal or equitable, and in which the preservation of the property requires that it should be taken under the control of the Court. An order, therefore, will be passed, continuing the injunction, and a receiver will be appointed, when a suitable person is named.