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***129 Sir J. W. Ramsden, Bart v Lee Dyson and Joseph Thornton**

House of Lords

Lord Chancellor Lord Cranworth, Lord Wensleydale, Lord Kingsdown, and Lord Westbury

Parol agreement—Tenancy—Right to lease—Equity—Agents.

If a stranger begins to build on land supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a Court of equity will not afterwards allow the real owner to assert his title to the land.

But if a stranger builds on land knowing it to be the property of another, equity will not prevent the real owner from afterwards claiming the land, with the benefit of all the expenditure upon it.

So, if a tenant builds on his landlord's land he does not, in the absence of special circumstances, acquire any right to prevent the landlord from taking possession of the land and buildings when the tenancy has determined.

If the tenant, being a mere tenant at will, builds on the land in the belief that he thereby acquires a title afterwards to claim a lease of the land, and the landlord allows him so to build, knowing that he is acting in that belief, and does not interfere to correct the error, *Semble*, that equity will interfere to compel the grant of a lease.

Quoere, whether an agent, having authority to let lands, can bind his principal by a stipulation that in certain events the tenant shall be entitled to have a lease upon certain terms.

If a principal knows that a stranger is dealing with his agent under the belief that all statements made by the agent were warranted by the principal, and, so knowing, allows the stranger to expend money in that belief, *Semble*, that a Court of equity would not afterwards allow the principal to set up want of authority in the agent. But this knowledge must be brought home to the principal.

T. took a piece of land belonging to R., from R.'s agent, by parol agreement; it was known to all parties that the land was to be built upon. A ground rent was fixed at £4. T. laid out £1800 in building. T. afterwards made a written application to R.'s agent for another piece of land, also for the purpose of building on it. In this application T. declared himself willing to take the land as "tenant at will." The land was allotted to him, and the rent fixed at £1 0s. 7d. When buildings were erected on the land the persons who had so taken the land were entered in R.'s rental books as tenants. It was admitted on all sides that where such takings were made the tenants would never be disturbed while the ground rent fixed as above described was paid. When the tenant desired to transfer the land to another person, notice was given to the agent, and the entry of the name of the tenant in the books of rental kept by the agent was altered. In many cases the form of proceeding was, that the land was surrendered to the landlord, and the new tenant was *130 accepted, much after the form of a transfer of copyhold. The tenancies were very numerous. T. alleged that there was believed to exist, and that R.'s agents had, by their words and conduct, encouraged such belief, a "tenant right tenure" on the estate, that a person who had so taken and built upon R.'s land was entitled at his pleasure to become a leaseholder, and to demand the grant of a lease for sixty years, renewable every twenty years on payment of a fine equal to double the annual ground rent. Such leases had, in fact, been granted, but there was no direct evidence of their being granted on any such claim of right; there was, however, evidence that a rail-

way company, being desirous of obtaining some of these pieces of land held under parol agreement on the payment of a ground rent, had refused to purchase them unless such leases were granted, and that in fact such leases were granted, and then the tenants received compensation for their buildings:—

(*diss.* Lord *Kingsdown*), reversing the decision of the Court below, that these circumstances did not shew the existence of anything greater than a tenancy from year to year, and did not establish any title to compel the grant of a lease, and, consequently, that the landlord having brought ejectment against T., equity could neither interfere to compel the grant of a sixty years' lease, nor to stay the ejectment. *Per* Lord *Kingsdown*,—If a man, under a verbal agreement with a landlord for a certain interest in land, or under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and, upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation. Under the special circumstances of the case the bill was ordered to be dismissed without costs.

THE Appellant in this case was the grandson of the late Sir *J. Ramsden*, Bart., and held certain estates at *Huddersfield* and its neighbourhood. Among the property of the late Sir *J. Ramsden* were several pieces of land forming part of the commons or waste of the manor of *Huddersfield*, allotted to him in the year 1789, and held by him in fee simple to the time of his death in July, 1839. The Appellant became possessed of these pieces of land under the will of his grandfather. The Respondent, *Joseph Thornton* (of whom the other Respondent, *Dyson*, was mortgagee), became a tenant to Sir *J. Ramsden* of a piece of land forming part of this waste, and, after Sir *J. Ramsden's* death, of another piece of the same land, which was allotted to him by the

guardians of the Appellant, who was then a minor. The tenancies appeared to have been created in this way: No agreements in writing were entered into by Sir *J. Ramsden*, but application was made to his *131 steward or land agent for the grant of a piece of land. The steward stated the amount of rent required for it, and allotted a piece of land. The applicant took possession of it, and built upon it. When a person had thus commenced a tenancy his name was entered on the rental roll of the estate. If he wished to transfer his tenancy to another person he went to the agent and announced his wish; the agent prepared a paper called “a transfer,” which was signed by the tenant and the proposed transferee, and handed to the agent, who retained it till the next audit, when he entered the name of the transferee in the rental, in the place of that of the former tenant. In the present instance, when *Thornton* first took a piece of land (the date of the taking was in controversy) he did not sign any document. He built upon the land, occupied the house, and his name was entered on the rent roll as tenant. The rent he paid was 4l. a year. In June, 1845, *Thornton* wrote the following note to the guardians of the present Appellant:—“Gentlemen,—I beg to make application to you for a plot of ground situated at *Paddock, Huddersfield*, on which I am desirous of building a mistal and other buildings, and which I am willing to hold under you as tenant at will at such rent as, you may think proper to fix.” This letter was, answered on the 25th of July, 1845, by the then agent, *Alexander Hathorn*, in a note which said: “The plan of the ground on which you propose to erect a mistal has been approved and signed,” fixed the annual ground rent at 1l. 0s. 7d., and went on thus:—“The first half-year's rent will be payable at November rent day, 1846. As soon as your building has been completed I will thank you to come here for the purpose of having your name regularly entered in the rental of this estate.” In September, 1857, *Thornton*, who had obtained a loan from the *Commercial Inn Money Club*, executed, jointly with *Lee Dyson*, the following document: “I, *Joseph Thornton*, of *Paddock, near Huddersfield*, &c., do hereby give up possession of a

dwelling-house and outbuildings situated at *Pad-dock* aforesaid unto Sir *J. W. Ramsden*, Bart.; and I, the undersigned *Lee Dyson*, of, &c., for and on behalf of the Commercial Inn Money Club, do agree to become tenant at will for the said premises under the said Sir *J. W. Ramsden*, Bart., to hold from the 13th of May last at such rent as he, the said Sir *J. W. Ramsden*, Bart., shall *132 from time to time think proper to fix." A similar paper was executed, having reference to the barn and mistal which formed the subject of the second occupation, by *Thornton*, and both the transfers were duly entered in the Appellant's, transfer book. Evidence was given that a general belief existed among the tenants that such a taking entitled any tenant at his pleasure to call for the grant of a lease. On one occasion a railway company, being desirous to purchase some of the houses erected by persons who merely held them on the parol agreement and the payment of a ground rent, refused to treat for the same except leases were granted, and leases for sixty years, renewable every twenty years on payment of a fine, were in fact granted, and then the respective tenants sold their buildings to the railway company, and received the compensation money. The question between the parties was, on what terms *Thornton* held these two pieces of land, whether merely as tenant at will, or with a right to call for a lease of the kind described? In November, 1861, the Appellant, in order to try this question, sent to *Thornton* a notice to deliver up the two pieces of land, together with "the dwelling-house, cottage, pleasure-grounds, gardens, barn, mistal, and stable," then held by him, and afterwards proceeded by ejectment to enforce such notice.

In February, 1862, *Thornton* and *Dyson* filed their bill (afterwards amended) against the Appellant, which alleged that the land held by them had been taken on a "tenant-right" tenure prevailing at *Huddersfield*, under the late Sir *J. Ramsden*, under which large sums of money were laid out upon the land, the tenants of which were entitled at any time to demand the grant of a lease for sixty years, renewable every twenty years upon payment of a

fine, according to the terms therein set forth¹. The bill prayed that it might be declared that *Thornton* was entitled to have a lease granted upon the said terms, or that he and *Dyson* were entitled to a lien on the property; that they could not be turned out of possession without being repaid the moneys expended by *Thornton* on laying out the property and building on it, or such other compensation as the Court might think fit; that *133 directions might be given to ascertain the amount of this compensation, and that in the meantime the proceedings in the ejectment might be stayed; and for farther relief.

Answers were put in and evidence taken on both sides, and in March, 1864, the cause having been heard before Vice-Chancellor *Stuart*, as on a motion for a decree, His Honour was pleased to make an order by which it was declared that *Thornton* was entitled to have a lease or leases of the two pieces of land on the terms stated in the bill². This was an appeal against that decree.

The *Attorney-General* (Sir *R. Palmer*), and Mr. *Bacon*, Q.C. (Mr. *Chapman Barber* was with them), for the Appellant:—

The evidence failed to establish any contract, express or implied, by which the Appellant was bound to grant a lease, as directed by the decree. The system or custom called in the bill "tenant right tenure," was not proved, but was disproved by the evidence. So far as the evidence went, it shewed that the tenants took leases, or went without them, as best suited their convenience, and they often went without them because they obtained the land at a lower rent than would have been paid upon a lease, avoided the expense of a lease, and were not required to enter into the covenants usually contained in building leases. Then, again, the writing under which the Respondents' land was taken in 1845 shewed the terms of dealing between the parties, and that writing neither conferred on *Thornton* the right to claim a lease, nor to claim compensation for buildings erected by him should he be turned out of possession; on the contrary, it expressly described *Thornton* as a "tenant at will."

The documents of September, 1857, in like manner shewed a surrender to the Appellant by *Thornton* and the acceptance by *Dyson* of the surrendered property as “tenant at will,” to the Appellant.

No relief can be granted here as upon specific performance, nor have the Respondents any claim to relief upon general equity, merely because expenditure has been made by the tenant under the observation of the landlord, but not under a specific agreement or arrangement: *Pilling v. Armitage*³ . *134

Mr. *Malins*, Q.C., and Mr. *Daniel*, Q.C. (Mr. *Fielding Nalder* was with them), for the Respondents:—

The Respondents are, upon the principles of general equity, fully entitled to the relief they seek. The system of allowing persons to take pieces of land and build upon them, such persons only paying a small ground rent, but being entitled to leases on settled terms, as stated in the bill, had been acted on for many years, and was recognised as an existing system, not only by the repeated assurances of the agents, but even by the private Acts of Parliament which had been obtained with regard to the *Ramsden* estates. The tenants, therefore, had the strongest possible assurances that they might lay out their money in perfect security. Equity would not allow their well warranted belief on this matter to be disappointed. In *Gregory v. Mighell*⁴ there had been an agreement for a lease, possession was taken, and expenditure permitted; specific performance was there decreed. Expenditure of money, making the property so much more valuable than before, was held in the Earl of Oxford's Case⁵ sufficient to entitle the persons expending the money to the protection of the Court of Chancery. [LORD CRANWORTH:—That case was before the Statute of Frauds.] *Mundy v. Jolliffe*⁶ , and *Pain v. Coombs*⁷ , shew that the acts of the parties may, by acquiescence and part performance, render that statute inapplicable: *Lillie v. Legh*⁸ ; *Shillibeer v. Jarvis*⁹ ; *Powell v. Lovegrove*¹⁰ ; *Farrall v. Davenport*¹¹ ; and the observations made by Lord *Thurlow* in *Allan v. Bower*¹² , are to the same effect. Lord

Hardwicke, in the *East India Company v. Vincent*¹³ , held that where a landowner suffers another man to build on his ground, without setting up a right till afterwards, the Court will oblige the owner to permit the person so building to enjoy quietly and without disturbance. *Pilling v. Armitage*¹⁴ , is not in point; the alleged agreement was there positively denied, and there was no acquiescence. Here the Respondents shew a contract, possession *135 taken under it, rent paid, and money expended, and there can be no doubt that all this took place under a general belief which was never contradicted. In *Stiles v. Cowper*¹⁵ , acquiescence was held sufficient to give the right; and though in *Dann v. Spurrier*¹⁶ , Lord *Eldon* refused the relief, because he thought the facts requiring it not established, he fully assented to the doctrine of equity as established in the previous cases. In the *Unity Bank v. King*¹⁷ , a father put his two sons into possession of a piece of ground on which he had erected buildings of the value of £280. They afterwards, of their own accord, erected other buildings at an expense of £1200, and it was held that they had a lien on the premises for their outlay. *Surcome v. Pinniger*¹⁸ , *Dowell v. Dew*¹⁹ , *Shannon v. Bradstreet*²⁰ , all tend to shew that in such a case as this equity will interfere, even against a remainder-man.

The facts in this case are clearly in favour of the Respondents. Take the letting here to be entirely by parol, still, even at law, a parol licence to put a skylight over the Defendant's area (which impeded the light and air from coming to the Plaintiff's dwelling-house) was held incapable of being recalled at pleasure after the work had been executed at the Defendant's expense, at least not without tendering the expenses: *Winter v. Brockwell*²¹ .

The words “tenant at will” in the application for the second piece of land were used in the same sense, and were so understood by all parties, as in a case of copyhold, that is, “at the will of the lord according to the custom of the manor,” and all the tenants believed, and were encouraged to believe, in the existence of the custom.

The *Attorney-General* replied.

THE LORD CHANCELLOR (Lord Cranworth):—

My Lords, this was an appeal from a decree of Vice-Chancellor *Stuart*, bearing date the 2nd of March, 1864, whereby it was declared that the Plaintiff, *Joseph Thornton*, was entitled to have a *136 lease or leases granted to him of two properties at *Paddock*, in the pleadings in the cause mentioned, at a ground rent or ground rents double the amount of the rent then payable for the same respectively, renewable at the times and on the terms therein mentioned; and it was ordered that the Appellant, Sir John William Ramsden, should grant to the said Plaintiff such lease or leases accordingly. The bill, which was filed by *Joseph Thornton*, and by the Respondent *Dyson* claiming as an incumbrancer under him, stated the circumstances in which *Thornton* had become possessed of the land in question, and which they contended entitled them, on general principles of equity, to claim from the Appellant a lease or leases, the particular terms of which I will not at present refer to. The Plaintiffs did not allege that there was any contract, written or verbal, for granting any such lease, nor was relief asked or given on the ground of specific performance of a contract. But His Honour thought that though there was no contract, and so that no case was made for specific performance, yet on general principles of equity the Plaintiffs were entitled to the relief which they asked, and he made a decree accordingly.

The property in question consists of a house and out-buildings, forming part of the town of *Huddersfield*, or its suburbs. The late Sir *John Ramsden*, the grandfather of the Appellant, was, in and prior to the year 1780, seized in fee simple of a large tract of land which has since that time been built upon, and which now forms a large part of the town of *Huddersfield*.

John Charles Ramsden, the eldest son of Sir *John*, died in his father's lifetime, leaving the Appellant, Sir *John William Ramsden*, his only son and heir-

at-law; and Sir *John* himself died in 1839, leaving the said Appellant, his grandson, then only eight years of age.

Sir *John*, by his will dated in 1838, and made after the death of his son, devised all his estates, except certain estates which had been settled on the marriage of his said son (the excepted estates do not include any part of the property in question in this cause), to the use (subject to several charges and trust terms) of his grandson, the Appellant, for life, with remainder to his first and other sons in tail male. There were leasing powers in the will, to which I need not at present advert. Sir *John* resided at *Byrom*, about *137 thirty miles from *Huddersfield*, which latter place he rarely visited. He confided the management of that property to his steward or agent, Mr. *John Bower*, who resided at or near *Byrom*, but who was accustomed to visit *Huddersfield* twice a year at audits, for the purpose of receiving the rents and looking over the property.

The mode in which this *Huddersfield* property was managed was peculiar. A book or roll was kept of the tenants; and, as the town became extended, any person desiring to take land for the purpose of building a house, used to apply to the agents of Sir *John* for the land he wanted. This was then marked out for him; he erected his buildings; the ground rent was fixed, and his name was afterwards entered on the roll as a tenant, and he paid his rent at the usual day or days of audit. If he wished to sell his house, he and the purchaser used to attend on the agent, and surrender, or purport to surrender, his property into the hands of Sir *John*, and the name of the purchaser was substituted for that of the original tenant. The same course was followed on a mortgage, only that in that case both names, that of the mortgagor and the mortgagee, were entered as tenants on the tenant roll. In the event of death, the name of the legatee or next of kin was substituted for that of the deceased. Persons thus holding land were popularly described as holding by tenant right.

But besides these tenants by tenant right, there were

other tenants who obtained regular leases; and the universal, or nearly universal, form of lease was a lease for sixty years, renewable for ever at the end of every twenty or forty years on payment of a stipulated fine. These tenants holding by lease were entered on the same tenant roll as the tenants by tenant right; but a memorandum was made against their names, signifying that they held by lease, and the rent at which they held was always at a considerably higher rate than that at which the other tenants held.

The Plaintiff *Thornton* took the two pieces of land, the subject of this suit, on the tenant light tenure, the one in the year 1837, in the lifetime of Sir *John*, the other in the year 1845, after his death. The circumstances connected with his taking the land in 1837 are thus stated by him in the bill:—He says that in the year 1837, being desirous of erecting a dwelling-house on a piece of high ground at *Paddock*, part of the *Huddersfield* property, devised *138 by the will of Sir *John*, he applied to Mr. *Joseph Brook* (whom he describes as one of the duly authorized agents of Sir *John*, with respect to the management and letting of the *Ramsden* estates and as transacting all the business relating thereto in the absence of Mr *Bower*), and stated to him his desire to become tenant of the piece of ground in question, as he wished to erect a dwelling-house thereon for himself. *Brook*, he says, informed *Bower* of what had thus passed, and *Bower* having afterwards come over to *Huddersfield* to an audit, went with *Thornton* to *Paddock*, accompanied by *Thomas Brook* (a son of *Joseph Brook*), who was then about nineteen years of age, and who acted for his father. The bill then states that *Thornton* pointed out to *Bower* the land he wished to have for his house, and that *Bower* assented to the application, saying that he would leave to *Joseph Brook* the staking out of the exact quantity of land to be taken. The precise quantity of land was afterwards agreed on between *Thornton* and *Joseph Brook*, and the ground rent was fixed by *Brook* at an annual sum of £4. *Thornton* then built his house, and has ever since paid the reserved rent of £4 per annum.

The bill then alleges, that while the building of the house was in progress, and when it was nearly completed, *Joseph Brook*, accompanied by *Thornton* and his father, came on to the land, and on that occasion *Thornton* consulted *Joseph Brook* as to the prudence of his taking a lease of the land and buildings; when *Joseph Brook* stated it would be folly in him to take a lease, that he was equally safe without one, and that he could get a lease whenever he wanted it; the lease referred to being, as *Thornton* alleges, a lease for sixty years, renewable every twenty years on payment of two years' ground rent as a fine; no other lease then existing or being then known on the *Ramsden* estates, at *Huddersfield*. No paper or document was signed by *Thornton*, and he alleges that he took the land relying on what had been said by *Joseph Brook*, and on the belief, universally entertained at *Huddersfield*, and encouraged by Sir *John* and his agents, that he could have a lease of it for sixty years, renewable every twenty years, whenever he might think fit, and that he would never be disturbed so long as he paid his £4 ground rent, and in the knowledge that very many other persons who had taken plots of lands and built on them, on the *139 same belief and assurance, had, on application, had leases granted to them for sixty years, renewable every twenty years.

The book or roll of the tenants of the *Huddersfield* property was kept at *Longley Hall*, an old mansion-house situate on part of the property, and the bill alleges that after *Thornton* had taken the piece of land in question he was entered in that book as the tenant thereof, at a yearly ground rent of £4.

Mr. *Bower* died in the month of May, 1844, and on his death the trustees of the will of Sir *John* appointed Mr. *George Loch*, now one of Her Majesty's counsel, to succeed him as auditor and manager of the estates, and as he resided at a distance, he appointed Mr. *Alexander Hathorn* to be the resident agent, subject to his control and superintendence. *Alexander Hathorn* resided at *Longley Hall*.

In this state of things the bill alleges that *Thornton*, finding himself, in the year, 1845, inconvenienced

for want of out-door offices, applied to *Hathorn* for a second piece of ground, and that the same was accordingly measured out for him by two persons acting under the said *Thomas Brook*, who had survived his father *Joseph Brook*, and was then one of the authorized surveyors of the *Ramsden* estates, that he, *Thornton*, then erected thereon, under the superintendence of *Hathorn*, the additional buildings which he wanted, and that, after he had done so, he received from *Hathorn* a letter, partly printed and partly written, fixing the ground rent for this additional land at £1 0s. 6d. per annum, which additional rent has been ever since regularly paid. The bill alleges that the money expended in building on the two pieces of land amounted at least to £1850.

On occasion of the first hiring, in 1837, no paper was signed by *Thornton*, but on applying at *Longley Hall* for the second piece of land a paper, containing a form of application, was put before him for his signature, as follows:—" *Huddersfield*, 16th June, 1845. Gentlemen,—I beg to make application to you for a plot of ground situate at *Paddock, Huddersfield*, on which I am desirous of building a mistal and other outbuildings, and which I am willing to hold under you as tenant at will, at such rent as you may think proper to fix.—I am, gentlemen, your most obedient servant.—To the trustees and guardians of Sir *John William Ramsden*, Baronet." *140 This he signed, but, as he says, without considering its purport or effect, without being furnished with a copy, and without having had it explained to him; he signed it in the belief that it was a mere matter of course, and in the firm persuasion that he was to hold this second piece of land on precisely the same terms as to not being disturbed in the possession, and as to a sixty years' lease, as those on which he held the other land.

These are the circumstances in which *Thornton* alleges that he became a tenant, first of Sir *John Ramsden*, and afterwards of his devisees. And there can be no doubt that he thereby became at law a mere tenant from year to year. As to the first piece of land, on which he erected the principal buildings,

he took it from *Bower*, as agent of Sir *John Ramsden*, at an agreed annual rent of £4, but without any stipulation as to the term during which he was to hold it; as to the second, he took it on a written application that it might be demised to him as tenant at will. He paid for several years the rent of both those pieces of land, and so had at least a tenancy from year to year.

Notices to determine these tenancies were given by the Appellant, Sir *John W. Ramsden*, and ejectments were brought to recover possession. There being no legal defence to those actions, the present bill was filed by *Thornton* and by *Dyson*, who claimed as mortgagee under him, on the ground that *Thornton*, though at law a mere tenant at will, had an equitable right to a lease for sixty years, with a covenant for perpetual renewal on payment of certain periodical fines. Whether he has established this right is the question raised in the cause. The Vice-Chancellor was of opinion that he has, and so decreed accordingly.

It will be convenient to consider the case first as to the land taken in 1837, in the lifetime of Sir *John*. The decree proceeds on the ground that it would have been a fraud in Sir *John* to refuse to grant the lease demanded; and so that his grandson, the Appellant, deriving title only as a volunteer through his will, is bound to do what it would have been a fraud in his grandfather to refuse to do. It may be well to consider shortly what the principles of equity on this subject are.

If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, *141 and leave him to persevere in his error, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title; and that it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented.

But it will be observed that to raise such an equity two things are required, first, that the person expending the money supposes himself to be building on his own land; and, secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights.

It follows as a corollary from these rules, or, perhaps, it would be more accurate to say it forms part of them, that if my tenant builds on land which he holds under me, he does not thereby, in the absence of special circumstances, acquire any right to prevent me from taking possession of the land and buildings when the tenancy has determined. He knew the extent of his interest, and it was his folly to expend money upon a title which he knew would or might soon come to an end. The Appellant contends that it is within this principle that *Thornton* is brought. He acquired, it is said, possession of the land in question as a mere tenant at will, or from year to year, to Sir *John*, and if on that infirm title he thought fit to expend a large sum in building, there is no principle of equity which prevents Sir *John*, or his devisees, from asserting their legal rights by determining the tenancy, and so obtaining the benefit of his expenditure.

The present bill was filed, not controverting this general principle, but contending that there were special circumstances raising an equity in favour of the tenant, arising out of a long uniform course of dealing adopted on the *Huddersfield* estate, whereby persons taking land, though only as legal tenants at will, or from *142 year to year, were led by Sir *John* to suppose, and did suppose, that they acquired a right, when they had built on the land, to hold it for an indefinite time without disturbance, and to become, at any time they might think fit,

lessees for sixty years, with a right to perpetual renewal at the expiration of every twenty or forty years on certain well understood terms.

His Honour the Vice-Chancellor thought that such a state of facts was established, that *Thornton*, when he laid out his money in building his house, did so in the belief, created or encouraged by Sir *John*, that he was at any time entitled to call for such a lease as he claimed, and that Sir *John* knew that he believed this to be his right, but nevertheless allowed him to proceed. His Honour, I presume, considered this to be in principle the same thing as when the owner of land sees another building on it in the mistaken belief that it is his own. If in that case equity would not allow the owner to lie by and profit by expenditure made by another in the erroneous supposition that the land on which it was made was his own, so neither would it be just to allow a landlord knowing that his tenant was building on the notion, however mistaken, that he had rights beyond those of a mere tenant from year to year, to profit by expenditure made in consequence of that mistake. There is great force in this reasoning; and if I had come to the conclusion that *Thornton*, when he erected his building in 1837, did so in the belief that he had against Sir *John* an absolute right to the lease he claims, and that Sir *John* knew that he was proceeding on that mistaken notion, and did not interfere to set him right, I should have been much disposed to say that he was entitled to the relief he sought. But a full consideration of the evidence has not led me to any such conclusion. It has failed to satisfy me, first, that *Thornton* supposed that he had against Sir *John* any absolute right beyond that of a tenant from year to year; or, secondly, that Sir *John* knew or believed that *Thornton* was expending his money in the mistaken belief that he possessed such a right.

The case made by the bill is, that Sir *John Ramsden*, by his agents, and since his death, his trustees, in order to induce persons to build on what is called the tenant right tenure, informed applicants for building plots that they would be equally safe, and

that the rents would be less in amount without a lease than with it; *143 and, farther, that they could have a lease whenever they required it; and that, by means of this course of dealing, entire confidence was created in the tenant right system, as conferring a good title to hold the lands so taken for ever, provided only they paid their rent; and, lastly, that they acquired a right to call for a sixty years' renewable lease, whenever it might be desired.

The Appellant, Sir *J. W. Ramsden*, by his answer, admits the existence of a large class of tenants holding by what is called the tenant right tenure; but he denies that it was an incident of that tenure that persons holding under it were more than tenants from year to year, or were entitled to call for a lease. On the contrary, he says that such tenants never had any title, except as tenants at will, or tenants from year to year, and that in consequence of their holding by this precarious tenure they had their land at a rent very much less than another class of tenants who took land on sixty years' leases, renewable for ever at the end of twenty or forty years, on certain terms stipulated in each particular case.

The parties in the cause being thus at issue, the question is,—What is the fair result of the evidence? Does it establish that which the Plaintiffs were bound to establish? Does it shew that when *Thornton* erected his buildings in 1837 (with which case alone we are now dealing), he did so in the belief that, though he was only at law a tenant at will, yet he had a right to hold his land to him and his personal representatives for ever, so long as he duly paid his rent; and, farther, that he had a right to call for a sixty years' lease, renewable for ever, whenever he should be minded so to do? and does it also shew that Sir *John* knew that he was laying out his money in that belief?

In support of their case the Plaintiffs offered, in the first place, the evidence of about 250 persons holding land in *Huddersfield* by the tenant right tenure, and they say that the bill correctly represents the tenant right tenure as established at *Huddersfield* by

Sir *John* and his representatives, on the faith of which they acquired and hold their properties, and that they never heard it questioned before the proceedings now set on foot by the Appellant which have given rise to the present suit.

None of these witnesses states when it was that he became tenant under what he calls the tenant right tenure. It would *144 have been material that they should have done so; for, as the only question on which this evidence bears on this part of the case is that relating to what was the belief of *Thornton* when he built his house in 1837, it would have been important for him to shew that the general belief to which the witnesses refer existed at that time. It is consistent with the evidence of these witnesses, that they all acquired their interests after the death of Sir *John*, and that no such general reputation or belief as that to which they refer existed in his lifetime. I am the more led to advert to this distinction because I observe that they speak of the tenant right tenure as having been established by Sir *John* and his representatives; and the question relating to what was done in the time of his representatives, will, I think, be found to be open to some observations not applicable to what was done in his lifetime.

It must farther be observed, that these numerous deponents were all, or almost all, in stations of life, so far as we can collect from their descriptions, making it improbable that they would be able well to scan and consider the precise nature of the reputation to which they depose. About thirty of them appear to have been unable to sign their names, and it is no harsh estimate of the weight due to their testimony to say that they were very likely to have been led by an involuntary bias to give a colour to the general belief and reputation in question, to which a little closer examination, by persons in a different sphere of life, might have shewn it was not entitled. With these few remarks I shall leave this part of the evidence, to which, it is but fair to say, no great weight was attributed at the bar.

What was mainly relied upon was the evidence

offered in support of the allegation that Sir *John* and his agents by their words, acts, and deeds, and by every means in their power, encouraged persons to erect buildings on the tenant right tenure, and stated that there was no occasion for leases, that such persons would be as safe without as with leases, and that they might have leases whenever they might require them, and that they should never be disturbed in their possession.

In support of these allegations evidence was given of statements made by *Joseph Brook*, whom I will assume to have been the principal local agent of Sir *John*, living at *Huddersfield*, and *145 acting there for him under Mr. *Bower*. *William Brook*, the surviving brother, and *John Brook*, a son of *Joseph Brook*, were both examined as witnesses, and they both say that *Joseph Brook* was in the constant habit of assuring all persons who, on applying for land, consulted him as to the expediency of taking a lease, that they would be as safe without a lease as with one; that so long as they paid their rent they would never be disturbed, and that they might have a lease whenever they thought fit to apply for it.

The language, then, attributed to *Joseph Brook* relates to two propositions; first, that persons taking land without a lease would never be disturbed so long as they paid their rent; secondly, that persons taking land without a lease might have a lease whenever they chose to call for it. As to so much of this evidence as relates to the first proposition, I give full credit to the accuracy of the witnesses, but I cannot say the same as to the second. I think, for reasons to which I will presently advert, their recollection on that point cannot safely be trusted.

Assuming, however, that he did make the statements attributed to him by these witnesses, it becomes important to consider what is the fair import of the language used by him, supposing it to be correctly given by the witnesses who speak to having heard it. And first, as to the statement that there would be no advantage in a lease; for that so long as the rent was paid the parties taking the land would never be disturbed. The Respondents say it

amounted to a statement that persons taking land at a yearly rent, and building on it, would have a right to hold that land to them and their personal representatives for ever, provided the rent was paid. The Appellants say, it must be interpreted as meaning only that though the right conferred was that of a mere tenant at will, or tenant from year to year, yet so long as the ground rent was duly paid there was no intention to disturb the tenants in their possession, and that they might thus safely allow the matter to rest in the honour of the *Ramsden* family.

If this latter be the true construction, it is clear that even if such statements as are attributed to *Joseph Brook* had been made by Sir *John* himself, the persons taking the land would have acquired no right, legal or equitable, beyond that of a mere tenant from year to year. If any one makes an assurance to another, *146 with or without consideration, that he will do or will abstain from doing a particular act, but he refuses to bind himself, and says that for the performance of what he has promised the person to whom the promise has been made must rely on the honour of the person who has made it, this excludes the jurisdiction of Courts of equity no less than of Courts of law. The important question, therefore, is, which of these two constructions is the correct one? I have no hesitation in saying that, in my opinion, that of the Appellant is the true construction.

In the first place, even taking the language to be exactly that attributed to *Joseph Brook* by his brother and his son, it is hardly that which he would have used if he had meant to represent to those who consulted him, that after they had taken land at a rent, and so become tenants, there would be no power in their landlord to disturb them so long as they paid their rent. What he is represented to have said to them is, that so long as they paid their ground rents, neither they nor their children after them would be molested; not that they *could* not, but that they *would* not be molested. The same observation may be made as to the evidence of the witnesses who speak to their conversations with *Joseph Brook* when they took their land for building. What they

represent him to have said, when they asked him as to the expediency of taking a lease, is, that so long as they paid their ground rent they would never be disturbed; not that they could never be disturbed; and to one of them, *Joe Moore*, he added, “nor will your present rent ever be raised.”

This distinction appears to me to be not unimportant, when the question is, whether it was intended to represent to the persons taking the land that they had a right to retain it for ever, or only that there was no intention on the part of the landlord to disturb them, and that they might rely on the honour of the family that no such step as evicting them from their holdings ever would be taken so long as they paid their rent. The language is at least as consistent with the latter view of the case as with the former, and must, I think, be interpreted in connection with the evidence of *Thornton's* solicitor, *Fredrick Robert Jones*, who says, that for many years prior to 1858 the investment of money on the tenant right tenure was made without hesitation because of the confidence *147 which the people reposed in the honour of the *Ramsden* family; and many other witnesses speak to the same effect.

Thus interpreted, the language attributed to *Joseph Brook* would not, either at law or in equity, enlarge the interest which every tenant took as tenant at will beyond his becoming afterwards tenant from year to year.

But the more important question yet remains to be considered, namely, whether there is evidence to shew that *Sir John Ramsden* knew, or even suspected, that representations were made which might fairly be supposed to lead his tenants at will or from year to year to expend money in building, in the belief that by building they acquired a title which he could never disturb. On this point the evidence of the Respondents wholly fails.

There are only two occasions on which *Sir John* is alleged to have been present when anything passed countenancing the notion that the tenants by what is called tenant right had any rights beyond that of

tenants from year to year. The first is that spoken to by *William Brook*, the surviving brother of *Joseph*. He tells us that in the year 1800, when *Sir John* and *Mr. Bower* were at *Huddersfield*, they, together with his brother *Joseph* and himself, were met in the road by a man named *Mortimer*, who had then recently erected a row of valuable buildings on his own freehold land. *Mortimer*, the witness says, pointed out to *Sir John* some old tenant right buildings which were an eye-sore to the row of houses he had so erected, and asked *Sir John* to have them removed. *Sir John* listened to him, and then, after taking *Mr. Bower*, *Joseph Brook*, and the witness aside, and after making inquiries of them as to the name of the owner, and how long the old buildings had been erected, and after making other inquiries, turned round to *Mortimer* and said, “These are tenant right buildings; those who hold them shall never be disturbed so long as they pay their rent,” or to that effect.

This is part of the evidence of the Respondents, and must have been offered by them for the purpose of shewing that, when in 1837 *Thornton* built his house, *Sir John* must have known that he did so in the belief that he would thereby acquire an absolute right for ever against his landlord. I cannot think that the evidence leads to any such inference. Though *Mortimer* was not, so far at least *148 as appears, himself possessed of any tenant right property, yet he was the owner of property in *Huddersfield*, and could hardly have been ignorant of a right which, according to the case made by the bill, had prevailed and been acted on for a very long period by more than half the inhabitants of the town. And yet the application he made to *Sir John* was wholly inconsistent with the hypothesis, that the owner of the old buildings, which he thought to be eye-sores, had an absolute right to them independent of his landlord. He evidently supposed that *Sir John* could compel their removal, if he would, otherwise his application was absurd. So again, the conduct and language of *Sir John* are precisely what might have been expected if he thought he had the power to do what was asked of him, and that

whether he should or should not comply with the request was a matter depending on his own pleasure. It is inconsistent with the notion that he understood the interest of the tenant to be one with which he had no right to interfere.

The other case in which Sir *John* is said to have personally interfered is that spoken to by the witness *William Brier*. He says, that in the month of August, 1816, he went over to Sir *John* at *Byrom*, carrying with him a plan, approved by the steward, of some land he wished to take for building; that Sir *John* approved the plan, and that, in answer to a question whether he could have a lease, Sir *John* said that a lease was unnecessary, that he should never be disturbed by him, or any *Ramsden*, or something to that effect, which satisfied the witness. Whether, as between Sir *John* and the witness, this might amount to an express contract that he should never be disturbed, is not the point to be considered; and there was certainly no such express contract with *Thornton* in this as in the case of *Mortimer* to which I have just referred. The language is not such as could induce a belief that Sir *John* supposed his tenants to understand that by building they acquired, to them and their representatives for ever, independently of special contract, absolute rights against him, which, so long as they paid their rents, he could never defeat.

Even supposing both these conversations, and any number of conversations to the same effect, to have been known to *Thornton*, and to have been present to his mind when he built his house in *149 1837, they could not, in my opinion, have tended to encourage the belief on which he says he acted. The obvious meaning of Sir *John*, in both cases, was, not that he could not, but that he would not dispossess the persons holding the land. No such assurance was made to *Thornton*, and the very foundation of his case is, that it was unnecessary, for that the right to possession for ever was created without any special contract by the mere fact of building on land held on what was called tenant right tenure.

I have thought it right to consider to what relief, if

any, *Thornton* would be entitled with respect to the first branch of the alleged rights of the holders by tenant right, viz., the right to hold for ever so long as they paid their rent. But it is not on this branch of the alleged right that relief is given by the decree, though perhaps it is its necessary foundation. The relief given proceeds on the other branch of the privileges said to attach to the holders of land held on tenant right, namely, their right to call at pleasure for a sixty years' lease, renewable every twenty years; and what *Thornton* was bound to establish was, that he built, and that Sir *John* knew that he built, in the belief that he had such a right.

The first observation I will make here is, that though there is a great deal of evidence that such a right was generally believed to exist, and though *William Brook* and *John Brook* say generally that *Joseph Brook* used constantly to tell persons taking land for building that they could have leases whenever they desired, yet none of the witnesses who actually took land from *Joseph Brook* in the lifetime of Sir *John* says that he ever made any such statement to him. Several such witnesses were examined, and say that *Joseph Brook* told them that so long as they paid their rent they would never be disturbed; but none of them says that anything like a statement that they could have a lease was ever made. On the contrary, *Matthew Riley* says that when he asked if he could have a lease, *Joseph Brook* said, "No; we don't grant leases." I mention this because I think it extremely doubtful whether any such statement as those spoken to by *William* and *John Brook* as to the right to a lease ever were made. Without attributing to those witnesses the intention to say what they knew to be false, I must yet observe that as no such statements were *150 made to the only witnesses examined who actually took land from *Joseph* in the lifetime of Sir *John*, it is by no means improbable that, after a lapse of many years, *William Brook* and *John Brook* may have confounded in their minds what they heard *Joseph* say with what, since the present dispute has arisen, has become the the subject of general discourse.

But it is no part of the Appellant's case to contend that leases would not in general be granted by Sir *John* to persons applying for land, provided only that they were willing to pay a much higher rent; and nothing is more probable than that what Joseph Brook said to persons applying for land had reference, not to leases to be granted at a future time, but to a lease to be made in the first instance when the tenancy commenced.

Assuming, however, that the facts are as deposed to by *William* and *John Brook*, and that *Joseph* was in the habit of telling people, when they took land, that they could have leases when they thought fit to call for them, the question is, how does that affect Sir *John*? Where any such statement was made to a person taking land, a question might arise between such persons and Sir *John* whether what so passed amounted to a contract by *Joseph Brook* binding on Sir *John*. No such question is raised, or could be raised, as to *Thornton*, for it is not alleged that any such statement was made when he took his land from *Bower*. As to *Thornton*, the statements said to have been made by Joseph Brook to persons taking land are only material so far as they tend to make it probable that they were known to him, and so had led him to believe, when he took his land from *Bower*, that he had thereby a right to call for a lease whenever he should think fit.

What was the belief of any one as to his rights on any particular subject, is a matter not admitting of direct evidence. The reasonable explanation of the conversation which *Thornton* had with *Joseph Brook* when his house was nearly completed, seems to me to be, that he was considering whether it was prudent to trust to what is called the honour of the *Ramsden* family, or whether he ought not to bind them by a lease; not that he supposed he could compel them to grant a lease as a matter of right.

But even supposing *Thornton* to have built in the firm belief that he was entitled to a lease, the important question still remains—*151 Did Sir *John* know that he was building in that belief? On this point the onus of proof is on the Respondent, and

he has wholly failed to satisfy me. In the first place, what was the lease on the faith of a right to which it is argued that Sir *John* knew *Thornton* was building? *Thornton* says it was a lease for sixty years, renewable every twenty years on payment of two years' ground rent as a fine, and that no other lease was at that time known at *Huddersfield*. This is not the nature of the lease to which the decree has declared him entitled; nor is it consistent with the terms of the leases then usually granted on the *Ramsden* estates when leases were granted, the fine on renewal being generally one year's improved value, not two years' ground rent.

But a much more important observation has reference to the rent. What can be the meaning of a person having a right to call for a lease at a rent to be agreed upon between him and his lessor? Suppose they do not agree. It is endeavoured to meet this by saying that the rent could not exceed double the amount of that at which the person applying had been holding as tenant from year to year. But the evidence of the Plaintiff fails to establish any such limit. It is differently given by different witnesses, but I think it is fair to take it from the witness *Fredrick Jones*, who had the best opportunity of knowing the general opinion of the place, as he had formerly been one of the solicitors of Sir *John*, and at the time of his examination was the solicitor of *Thornton*. He says:

"It was part of the said system, and I have known of many instances, that tenant right holders, or holders at will, as they have been variously termed, might have, and have had, sixty years' leases, renewable every twenty years, for ever, upon such terms with regard to rent as they could bargain for with the agents of the estate; but it was generally understood that such rent would be double the tenant right, unless the agents either had agreed or would agree for a less rent."

Now, supposing all this to have been known to Sir *John*, I do not think it can be treated as amounting to knowledge on his part that his tenants at will were laying out their money in the belief that they

had a right to call for a lease perpetually renewable whenever they might think fit. The mere circumstance that the amount of rent remained to be settled by agreement between the *152 lessor and the lessee excludes the notion of there being a right to compel the grant of a lease. The statement by *Jones* that it was generally understood that the rent would be double that which had been paid by the lessee as tenant from year to year, unless a lower rate was agreed upon, is far too vague to be the foundation of anything like a claim of right. He does not even say that it was generally understood that the landlord could not insist on a higher rate, but only that he would not; the same distinction to which I have already adverted in dealing with the alleged right to hold for ever, so long as the ground rent was duly paid. If there was nothing else, this absolute uncertainty as to rent seems to make it impossible that Sir *John* could have supposed his tenants at will were building in the belief that they had any right to compel their landlord to grant them a lease.

But another important observation on this part of the case is, that the supposed right is one in which there is no reciprocity. It is not alleged, indeed it is denied, that there was any right in the landlord to compel his tenants from year to year to accept a lease; and yet it is supposed that the landlord was continually making demises from year to year, with the knowledge that those who thus became his tenants supposed they acquired rights against him without his acquiring any corresponding rights against them.

The only evidence which could have satisfied me that Sir *John* knew, or even suspected, that such a belief was entertained, would have been a uniform practice of granting such leases as are represented to have been the right of the tenant at will whenever they were called for; but on this point the evidence wholly fails. There is no evidence that even a single lease was granted in the lifetime of Sir *John*, to any person holding by tenant right, though he was in the enjoyment of the property for at least fifty-nine

years. During that long period of time he granted 296 leases, of which 227 were granted before, and sixty-nine after the year 1816; of the 227, five were not renewable leases, but the remaining 222 contained a covenant by Sir *John* to renew at the end of every twenty years on payment of a stipulated fine, or if no renewal was then made, then at the end of forty years on payment of a larger fine.

The nature and amount of the fine varied. In seventeen of the 222, the fine was one year's improved value if the lease was *153 renewed at the end of twenty years, or ten years' value if renewed at the end of forty years. In 174 the fines were two years' rent if renewed at the end of twenty years, or ten years' rent if renewed at the end of forty years. In the remaining thirty-one the fines were fixed sums, not depending either on the rent or value of the land. The sixty-nine leases granted after 1816, were all renewable leases like the others. Thirty-one of them were renewals of former leases, and the remaining thirty-eight were all made renewable on payment of one year's value at the end of twenty years; or ten years' value at the end of forty years.

It seems to me impossible, in the face of this evidence, to believe that Sir *John* knew that persons taking land on the tenant right tenure, had built or were building their houses in the belief that they were entitled, whenever they thought fit, to call for a sixty years' lease renewable at the end of every twenty years, either according to what *Thornton* says was his belief, namely, on payment of two years' rent, or according to the relief given by the decree, on payment of one year's improved value. Sir *John* could not have understood that any such belief prevailed, knowing as he must, that though he had many hundred tenant right tenants he had never granted a lease to any of them; and, farther, that in the cases in which he had granted leases to persons taking land on lease instead of by tenant right, he had from time to time changed the terms of renewal according to his pleasure.

It does not seem to me to be important that, after the death of Sir *John*, leases were in many cases

granted to tenants holding by tenant right. The circumstances under which they were granted do not lead to the inference that Sir *John* knew that buildings were erected in the belief that the persons building could claim a lease as of light, which is the point we are now considering. It is no part of the Appellant's case, that land was not frequently taken for building on the faith that when the buildings were erected a lease would be granted. In all such cases leases were granted. The conversations spoken to by the Plaintiffs' witnesses, invariably shew that it was in general optional with those who took land to take it either with or without a lease. The substance of what Joseph Brook is reputed to have said is almost invariably that the applicant might have a lease, but that he would be throwing away his *154 money, that it would cause him expense, and materially increase his rent, and that he would be perfectly safe without a lease. Still it is certain that many persons preferred, even at a higher rent, the ordinary security of a lease, which, however, never was granted till the buildings had been completed, or nearly completed.

The mode of dealing with this property being such as I have stated, it was almost certain that at the death of Sir *John* there would be, as in fact there were, many persons who had taken land and were building on it in the faith that, according to the usual practice, they might, when the buildings were completed, have a lease in the form then ordinarily adopted. The will, however, was thought by counsel not to contain powers sufficiently ample to enable his devisees to grant leases in that form. To obviate all difficulties on this head an Act of Parliament was passed in the year 1884, giving to the tenant for life, and to the trustees of the will during his minority, leasing powers, which it was thought had not been effectively created by the will.

The Act, after reciting the will of Sir *John* and his death, proceeds to state that the system of managing the *Huddersfield* estates had been, that no person desirous of taking land on lease for building purposes obtained any written agreement for a lease,

but was permitted, after a piece of land had been appropriated to him, to build upon it, upon the understanding that after he had built a lease would be granted to him, perpetually renewable according to the form set forth in the schedule; and that many persons, relying on this system, had, in the lifetime of Sir *John*, erected houses on the faith of leases being granted to them, but no such leases had been granted; and, farther, that since the death of Sir *John*, difficulties had arisen concerning the renewal of leases in pursuance of his covenant for renewal. It is enacted that it should be lawful for the trustees of the will during the minority of the Appellant, Sir *J. W. Ramsden*, and for him after he should attain his majority, to demise and lease to any person who in the lifetime of Sir *John* took land (being part of the estates devised by the will of Sir *John*), on the faith of a lease being granted to him, according to the system aforesaid, and who had erected buildings thereon, by a lease of the same, according to the form mentioned in the schedule. This form was that of a lease for sixty years, *155 renewable at the end of every twenty years, on payment of one year's improved value; or at the end of forty years, on payment of ten years' improved value. The 2nd section of the Act authorized the granting of renewed leases which Sir *John* would have been bound by his covenants to grant, and the 3rd and subsequent sections enabled the trustees during the minority, and Sir *John* himself after obtaining his majority, to grant building leases of any of the devised lands, with covenants for perpetual renewal, on terms to be agreed upon.

No leases were granted after the death of Sir *John* until after the passing of this Act; but Mr. *Hathorn*, who, on the death of Mr. *Bower*, in 1844, had become the resident local agent of the Appellant at *Huddersfield*, informs us that after the passing of the Act, and during the minority of the Appellant, thirty leases were granted to persons who were at the times of the grant holding by tenant right tenure. He adds, however, that in the case of fourteen out of these thirty, the parties were entitled to a lease, as they had built on an agreement that they

should have a lease when the buildings were completed. All the other sixteen were granted on rents which were materially raised, and not on any claim of right by the parties who obtained them.

What was done after the death of Sir *John* can only be material upon this part of the case, so far as it may throw light backwards on what was the practice in his lifetime; and it seems to me impossible to deduce from what was thus done, in and after the year 1845, under the powers of this Act, anything as to what Sir *John* supposed to be the opinion of those who took land from him without any agreement for a lease. As to many of them, it is clear that they were entitled against Sir *John* to claim a lease. As to the others, the lease was granted as a matter of favour or contract, not as a matter of right, and it has not, therefore, any tendency to support the views of the Respondents. But there were some other leases granted to tenant right holders besides the thirty thus referred to—namely, those granted to persons whose tenant right lands were compulsorily taken by railway companies. The facts as to these persons were as follows:

Some houses in *Huddersfield*, held by persons on the tenant right tenure, were, in the years 1845 and 1846, necessary for enabling *156 the proprietors of the *Huddersfield and Sheffield Railway* to make their line. Notices for taking their houses were served on the occupants, but as they were, in the eye of the law, at best, mere tenants at will, a difficulty arose as to the mode in which, and the persons to whom, the purchase-money was to be paid. If the company was to treat them as mere tenants from year to year, the purchase-money, except so much of it as would represent the very small interest of such a tenant, would be payable to the devisees of Sir *John*. But it had always been the practice to recognise these tenants, though at law mere tenants from year to year, yet as holding under an engagement of honour, that so long as they paid their rents they would never be disturbed. This was felt by the trustees to give the tenants a title in honour to receive such compensation as they would have been

entitled to if they had derived from Sir *John* a legal title, and not a title depending merely on the honour of the family. It would not, however, have been just to give to them a legal title enabling them to hold for ever at the rents at which they held as tenants from year to year; for in those cases in which a legal title was granted to persons when they took land for building, it had always been done by means of a lease perpetually renewable at a rent much greater than that at which it would have been granted to them if they had taken it as tenants from year to year. The course, therefore, followed by the trustees was to treat these tenants as persons who had built on the faith of having leases, and to fix the rent at the sum at which, if that had been the case, the leases would have been granted. Leases were accordingly granted on that principle, and so the landlords and the tenants became entitled to the purchase-money between them, according to the value of their respective interests.

Sixteen such leases were granted in the year 1846; and *Hathorn*, who was then the local agent at *Huddersfield*, states in his evidence that none of them was granted on the application of the tenant or as a matter of right; and farther, that these leases were entirely exceptional, and all the arrangements connected with them were carried out by Mr. *Fenton*, since deceased, and *Frederick R. Jones*, then the solicitors of the trustees. *Frederick R. Jones* afterwards became the solicitor of the Plaintiffs, and was examined after and in answer to *Hathorn*, but he does not contradict him; and, on the *157 contrary, states that the scheme of granting these leases originated with the trustees. I am aware that two of the lessees, *Prass* and *Tattersfield*, stated, when examined in chief, that their leases had been granted to them on a claim of right. No other witness confirms this statement, which is wholly inconsistent with what was afterwards sworn, not only by *Hathorn*, but also by *Frederick R. Jones*, the Plaintiff's solicitor; and I find it impossible not to believe that the account given by *Hathorn* is strictly accurate.

Even assuming, therefore, that what was done after the death of Sir *John* could be relied on as tending to shew either what was the belief under which persons taking land in his lifetime acted, or what Sir *John* supposed it to be, I do not think that these leases granted on occasion of the making of the railway throw any light on the subject.

For the same reasons, I attach no weight to the fact that on other occasions, when damage was done to houses held on tenant right, by working mines or otherwise, the compensation was, with the knowledge and approbation of Sir *John* and his agents, paid to the tenants. So, again, local taxes for drainage and other improvements were charged on and paid by the tenants. All this was the necessary consequence of their being treated by Sir *John* as persons whom he felt bound in honour to consider as tenants never to be disturbed, and do not, as it appears to me, tend to support the case of the Plaintiffs.

So far, therefore, as relates to the piece of land held by *Thornton*, in the lifetime of Sir *John*, I do not think it necessary to say more, except only as to a part of the argument at the bar, by which I understood counsel to suggest that it was not necessary to prove actual knowledge in Sir *John* to shew that he knew that *Thornton* built on the faith that he was entitled to a lease whenever he should think fit to call for it, but that if that was known to *Joseph Brook*, Sir *John* would be bound as if it had been known to himself. I think this is a mistake as to the principles of the law of agency. Even if *Joseph Brook* was, what he is not shewn to have been, and what, on the evidence, I do not think he was, a local agent, authorized to create tenancies without referring to *Bower*, still that would not enable him to bind his principal as to matters *dehors* the contract. If he had made it part of the contract with any *158 person whom he had accepted as tenant at will that he, the tenant, should be at liberty to call for a lease at his pleasure, then would arise the question, whether this part of the contract was within the scope of the agent's authority? But it is not sugges-

ted that any such contract was made with *Thornton*. His case is, that Mr. *Bower*, being a person authorized by Sir *John* to let his land to persons taking it as tenants at will, had let to him, as tenant at will, the land on which he built his house in 1837, and that he had taken it without requiring a lease, fully believing, from what *Joseph Brook* stated to him, and had stated, on numerous other occasions, to other persons, and what had thereby and otherwise become the common reputation of the place, that all persons so taking land were entitled to a lease whenever they should call for it.

Supposing such statements to have been made, however constantly and openly, they would not be binding on Sir *John* unless he had authorized *Joseph Brook* to make them, or else knew that he made them, and that persons taking land acted on the faith of them. If, indeed, the principal knows that persons dealing with his agent have so dealt in consequence of their believing that all statements made by him had been warranted by the principal, and, knowing this, allows the persons so dealing to expend money in the belief that the agent had an authority which, in fact, he had not, it may be that in such a case a Court of equity would not allow the principal afterwards to set up want of authority in the agent. But this equity, whenever it exists, depends absolutely on the fact that the knowledge on which it rests can be brought home to the principal.

Here the contract was made by Mr. *Bower*, on the part of Sir *John*, and by him only. I do not think there is any principle, either of law or equity, which can enable the tenant to say that the rights under that contract against Sir *John* could be affected by statements made by a local agent without the knowledge of, or authority from, either Sir *John* himself, or Mr. *Bower*.

I have now gone through the whole of the case, so far as relates to the land taken for building in the lifetime of Sir *John*, and I have stated my reasons for thinking that *Thornton* had no title, legal or equitable, beyond that of a tenant from year to year; that *159 his claim to continue to hold so long as

he paid his rent, as well as his claim to have a lease, rested entirely on the pleasure of Sir *John*, and on what he and those who derive title through him may think proper to concede.

It remains only that I should consider the claim so far as it relates to the tenancy created after the death of Sir *John*, as to which I need not detain your Lordships long. The observations I have made on the tenancy created in the lifetime of Sir *John* are all applicable to this second taking; besides which, there are other reasons which, as it appears to me, shew that the Plaintiffs were not entitled to the relief given by the decree, or to any relief at all.

The undisputed facts as to this part of the case are as follows: In the month of June, 1845, *Thornton*, being desirous of obtaining more ground for the purpose of adding some outbuildings to his house, applied for that purpose to Mr. *Hathorn*, who, on the death of Mr. *Bower*, in 1844, had been appointed a resident agent for managing the property under Mr. *Loch*, who had succeeded Mr. *Bower*. Previously to this time a very proper system had been introduced in the management of this property, under which every person applying for land to be held by him not on lease was required to make his application in writing, stating expressly that he applied for it to be holden by him as tenant at will; and printed forms for this purpose were kept at *Longley Hall*, where the business of the estate was managed. When *Thornton* applied to *Hathorn* for the additional land, one of these forms, properly filled up, was put into his hands for his signature, and he signed the same. I have already mentioned its exact form and contents.

Hathorn, having obtained the consent and approbation of Mr. *Loch*, sent to *Thornton* a letter of advice, as follows:

“*Longley Hall, Huddersfield,*

“24th July, 1845.

Sir,—I beg to inform you that the plan of the

ground on which you propose to erect a mistal, stable, &c., at *Paddock*, to be held at will, has been approved of and signed by Mr. *Loch*. The quantity of ground to be occupied by you will be 165 square yards, which, at the rate of 1s. ½d. per yard, will make the amount of the annual ground rent payable by you to the trustees of Sir *John William****160** *Ramsden*, Baronet, £1 0s. 7d. The first half-year's rent will be payable at November rent-day, 1846. As soon as your building has been completed, I will thank you to come here, for the purpose of having your name regularly entered in the rental of this estate.

“Your obedient servant,

“*Alex. Hathorn.*”

The ground was properly staked out. *Thornton* erected his new buildings, and was entered on the rental at *Longley Hall*, and he afterwards duly paid his rent from time to time as it became due.

That he thereby became at law tenant to the trustees from year to year, and for no greater interest, is clear; but he insists on the same equity on his second as on his first tenancy, namely, that he was entitled to treat this tenancy at will as giving him, against Sir *John* and the trustees, an absolute right to call for a sixty years' lease, perpetually renewable. The decree of the Vice-Chancellor proceeds on the ground that he was so entitled, but I am quite unable to understand the principle on which this relief was given. Even if, contrary to the opinion I have formed, the facts had warranted the conclusion that Sir *John* was bound to consider all persons entered as tenants at will, or from year to year, on his rent-roll, as being entitled to call for such a lease as *Thornton* required, still I cannot comprehend how any such equity can affect the Appellant, Sir *J. W. Ramsden*, with respect to tenancies at will created by his guardians after the death of Sir *John*. Every precaution was taken to shew to persons who took land after the death of Sir *John* that they were mere tenants at will. They were always required to sign an application for land to be held by them as

tenants at will, and *Hathorn* says that the words “tenants at will” were printed in large conspicuous text characters, so that they could not be overlooked. *Thornton*, indeed, says that, though he signed the application, he had no opportunity of making a copy of it. He does not suggest that he did not read and perfectly understand it; and *Hathorn* says he might have had a copy if he wished for it. Add to which, that in the answer which he retained, or might have retained, he was expressly told that he was to hold as tenant at will, at a rent then fixed by the lessors. I consider it, therefore, to be established beyond doubt that he knew that his title was *161 merely that of a tenant from year to year; though I also firmly believe that he thought, in regard to this second hiring, as in regard to the former, that he might safely rely on what was called the honour of the *Ramsden* family; for the evidence shews that this feeling prevailed after the death of Sir *John* no less than during his life. I will not repeat what I have already said, namely, that no Court can take cognizance of claims founded only on what is considered an engagement of honour.

On these grounds I think that the claim of *Thornton* to a lease of this second piece of ground is at least as untenable as that relating to the former.

I will only add, that the conduct of *Thornton* when, in 1857, he surrendered the property to the Appellant, Sir *J. W. Ramsden*, for the purpose of the mortgage to *Dyson*, and caused the names of himself and *Dyson* to be entered as tenants at will, strongly confirms the view I have taken of the case.

The decree of the Vice-Chancellor declares the Plaintiff *Thornton* entitled to a sixty years' lease, renewable every twenty years on payment of the fines mentioned in the schedule to the Act of Parliament, *i.e.*, a fine of one year's improved value. Even if all other difficulties were removed, I cannot understand how the Plaintiff could be entitled to a lease on these terms when his case, as made by the bill, is, that he was entitled in equity to a sixty years' lease, renewable every twenty years on payment by way of fine, not of one year's improved

value, but of two years' ground rent. The mere circumstance of the uncertainty as to what the terms of renewal were to be, affords cogent evidence against any claim of right whatever.

The Plaintiffs, in my opinion, have wholly failed; and I shall here dismiss the case, with one observation, however, as to the claim based on the reliance placed on the honour of the *Ramsden* family.

It is not my intention to step out of the line of my duty by expressing or even forming an opinion as to how far this claim is well founded. Probably the system was originally adopted in the notion that it would give to a humble and not generally wealthy body of dependent tenants an easy and cheap mode of holding and disposing of their houses. It was impressed on them that by *162 means of the register kept in the books at *Longley Hall* they could sell, mortgage, or dispose of the property, so far as they had property in their houses, by will, at an expense of 2s. 6d., instead of many pounds. Now, whatever obligations of honour the mode in which this property was managed may have created in the *Ramsden* family, I confess that this case has satisfied me that it was absolutely necessary, for the interest of all parties, that some mode should be adopted for putting an end to it. It was an attempt to create a new and cheap mode of conveyancing, which was certain, sooner or later, to involve in difficulties those who had relied on it. The supposed transfers were altogether ineffectual, and it is a subject of wonder to me that litigation was not long ago occasioned by it. The present Appellant endeavoured to do what he thought fair and just, by obtaining powers to grant leases for ninety-nine years. Whether that was more or less than his tenants at will had a right to look for from what they call the honour of the family is a point on which I give no opinion, but that some arrangement should be adopted which should put an end to the system hitherto pursued seems to me absolutely indispensable.

In my opinion the Plaintiffs did not establish a title to any relief, and so that their bill ought to have been dismissed.

In the particular circumstances of this case, and not at all relying upon the fact that I know that the opinions of your Lordships are not unanimous, which I think is no ground for influencing your Lordships' judgment on the question of costs, but in consideration of the circumstance that this system has gone on so long, and that the parties might have thereby been misled as to what they supposed to be their rights, I shall advise your Lordships to remit the cause to the Court of Chancery, with the declaration that the bill ought to have been dismissed, without saying anything as to costs.

My Lords, I ought to have said that I have had more than one communication on the subject of this case with Lord *Brougham*, who was present at the hearing, but is unable to attend here to-day, and he has desired me to say, that having communicated with me and my noble and learned friends on the subject, he entirely concurs in the views which I have expressed.*163

LORD WENSLEYDALE:—

My Lords, the questions in this case arise upon two transactions, one between Mr. *Thornton*, under whom the Respondents claim, and the late Sir *John Ramsden*, then the absolute owner of this part of the *Huddersfield* estate in fee, with respect to a piece of waste land alleged by the Respondents to have been taken by Mr. *Thornton* from the agent of Sir *John* in the year 1837, on which Mr. *Thornton* built a house, and expended a sum of more than £1800 in so doing, and the second on the 10th of *June*, 1845, when he made application to Mr. *Hathorn*, appointed as manager of the estates by Mr. *Loch*, the agent of the trustees and guardians of the Appellant, Sir J. W. Ramsden, for an additional plot of ground for building a mistal connected with the first-mentioned piece of land.

The two pieces of land in question were part of the unsettled lands belonging to the grandfather of the Appellant, Sir John Ramsden, in fee, and were formerly part of the common and waste lands of the manor. He was the owner in fee simple to the time

of his death in 1839. The Appellant Sir *John W. Ramsden*, his grandson, succeeded under his father's will, and attained his majority in September, 1852.

The questions in this case to be considered are, first, whether as to the first transaction Mr. *Thornton* made with the late Sir John Ramsden any contract binding, in law or equity, on his successor, the Appellant, which can be enforced against the Appellant, and, if not, whether the Respondents have any equity to oblige the Appellant to make good, by a lease, or otherwise, the loss sustained by Mr. *Thornton*, under whom they claim, by expending money in building a house by his licence; and, secondly, similar questions are to be decided with respect to the second take of additional land in the year 1845 for the mistal.

In the first transaction, that alleged to have taken place in 1837, *Thornton* informed Mr. *Brook*, an alleged agent of the late Sir *John Ramsden*, that he wished to build a house on a part of the waste land. It was agreed to by Mr. *Bower*, the acknowledged agent of Sir *John*, and the amount of the ground rent was fixed by the agent at £4 per annum.

On taking this piece of land it is alleged that Mr. *Thornton* asked *164 the alleged agent of Sir *John Ramsden*, Mr. *Joseph Brook*, his opinion as to the prudence of taking a lease or not of the land and buildings, and Mr. *Brook* assured him that it would be folly to have a lease when he was equally safe and secure without a lease as with one, and that he could get a lease whenever he wanted one.

The Appellant disputed the date of the first application. *Thornton's* name as tenant of the first take does not appear in the roll of the tenant right holders of the *Ramsden* estate (already explained by my noble and learned friend on the woolsack) till the year 1843; but it does not seem to me to be material to determine the precise date of the first application. The house and improvements were completed by Mr. *Thornton*, and he went to reside in the house in the early part of 1839, and he was entered on the

roll as tenant at £4 a year in 1843. *Thornton* occupied, and in 1845 applied to the trustees of the estate of Sir John W. Ramsden, the Appellant, and his guardians, to take an additional piece of land for a mistal. Both these pieces of land were taken without any express agreement for a lease. The rent fixed for a lease, or an agreement for a lease, was always higher than that which was fixed for a simple tenant right holding.

A bill was filed by the Respondents against the Appellants on the 12th of April, 1862, and the case was fully argued before the Vice-Chancellor *Stuart*. His Honour pronounced a decree in favour of the Respondents, not on the ground that this was a case of a claim for specific performance, nor did the bill pray relief on that ground, but that it proceeded upon a recognized equity, much higher and more positive than the discretionary and ordinary equitable jurisdiction for specific performance, His Honour thinking that in the case of the permission to build the house given by the acknowledged agent of Sir *John Ramsden* in the year 1837, and by the trustees and guardians in the case of building the mistal in 1845, a lease ought in equity to be given to indemnify the tenants. His Honour seems to have thought that it would be a sort of breach of faith and a fraud on the part of the owners if they did not grant leases, and he thought they ought to do so, and that he was warranted in ordering a lease for sixty years at the double of the rent then payable.

Whether this decree for the Respondents can be supported upon *165 the ground stated by the Vice-Chancellor, is the important question in this case.

The case is of some interest with regard to the principle it involves, and of great importance, as it affects a very large and valuable property in the district of *Huddersfield*, with respect to which very similar questions may, no doubt, arise. It was argued for several days in your Lordships' House by very able and learned counsel on both sides. The minutest parts of the case have been investigated with great care, and the long lapse of time since the argument has enabled us to consider the whole case

very carefully. I have satisfied myself that the opinion of my noble and learned friend on the woolsack, which he has just delivered, that the bill ought to be dismissed, is perfectly correct.

I am of opinion that the Plaintiffs cannot support their case, either at law or in equity.

To consider the case without, for the present, adverting to the ground of the Vice-Chancellor's decision, it is perfectly clear that the Respondents could not succeed on the ground of a manorial custom affecting the tenure of those lands, analogous to a copyhold custom. The alleged practice is comparatively quite modern, nor has that view of the case, very properly, ever been brought forward on the part of the Defendants in Error.

Nor has any express or implied contract on the part of the landlord been made out by the evidence.

Certainly there was no contract in writing by the landlord, or an agent competent to bind him, either express or implied, so as to bind the landlord at law. Nor was there, I clearly think, any evidence of an express or implied parol contract, which being afterwards partly performed, would be binding, notwithstanding the provisions of the Statute of Frauds.

On the part of the Respondents, it was contended that *Thornton* took under what is termed the "tenant right" system in the manor, which existed only, or arose, in the time of Sir *John Ramsden*, and is alleged to have been, that the person who took land to build upon, and did build to the satisfaction of the lord or his steward, was entitled to hold at a certain rent, and also, whenever he pleased to ask for it, to have a lease from the lord of the manor for sixty years at the rent fixed for a lease at the time of the being *166 allowed to build by the lord or his steward, or if not then fixed was to be afterwards fixed, and the lease to be renewable at stated periods upon the payment of a fixed fine. It does not appear that any lease was ever given, as far as I can collect, to any person claiming on the ground of this tenant

right, and as being entitled thereby, by Sir *John Ramsden* himself, or in his time.

To my mind there would be very great difficulty in making out that any such implied contract could be construed to have arisen on the part of the landlord. Sir *John Ramsden*, the proprietor in whose time the usage originated, does not appear to have granted any leases under this usage. But even if there had been a practice of granting leases, prevailing for a very long period of time, by the landlord who was owner in fee, and might grant any leases of any description that he pleased to any person he pleased, with any terms, it would be very difficult indeed to convert that practice into an obligatory custom or usage, especially in those cases in which the alleged custom itself contemplates a future important matter, which was left open to future agreement, namely, the amount of rent to be paid and other matters to be fixed under the lease to be granted. A thousand instances of the grant of leases, all of which may be referred to kind feeling on the part of the landlord, which will explain every part of this case (and which, I sincerely hope, will, whatever the result of this suit may be, continue still), would prove nothing. It appears to me to be perfectly out of the question to hold that there was a contract to grant a lease, the most important terms of which—the amount and time of payment of the rent to be paid—were not stipulated, and which would be naturally the subject of a fresh agreement. If a verbal statement' to the like effect had been made by Sir *John Ramsden* himself to *Thornton* before he began to build, the precise terms being clearly in the power of Sir *John Ramsden* to fix, all that could be said would be that the rent and precise terms would in such case be left to the honourable feelings of Sir *John Ramsden*, and not create a legal obligation. I cannot see how he could be considered to have made any complete contract at all, still less is there any ground to imply on the part of the landlord an agreement that until the lease was granted the tenant was to hold as an irremovable tenant for ever at the lower rent at which he held the *167 property as tenant at will, which was suggested in

the course of the argument.

To me the evidence is quite satisfactory that *Thornton* took, in both instances, as tenant at will, both in point of law and in equity; and every claim beyond that can only be on the honourable feelings of the Appellant.

On giving up the first take to the *Commercial Club*, on the 30th of September, 1857, he then acknowledged himself to be tenant at will in distinct terms, and at such rent as he, the landlord, would think proper. At the take of the mistal, on the 26th June, 1846, he takes it, in like manner, expressly as tenant at will from the trustees and guardians.

Afterwards, on the 16th of October, 1856, *Thornton* writes to Mr. *Hathorn* to know the conditions on which Sir *J. W. Ramsden* then granted leases, and how much per yard he should be charged for a house, if leased, as he thought of having a lease; which shews, distinctly and decidedly, that he did not then consider that he was in the condition of a leasehold tenant, or tenant having a right to a lease; and, therefore, there certainly was no mistake in stating himself to be tenant at will of the land in the first take, when transferring it to the *Commercial Club* in 1857.

These circumstances form a very strong case against the Plaintiff, which is, in my mind, entirely unanswerable at law.

The words “tenant at will” were undoubtedly meant by the landlord to be understood in their proper legal sense, and must be taken to have been understood by the tenant to mean what they imported. There cannot be, I think, the slightest doubt upon this part of the case.

Before adverting to the most important question, it remains shortly to notice an argument brought forward on the part of the Respondent. It appeared that in 1845 the trustees of the *Ramsden* estate permitted some tenants whose holdings were required by some railway companies, and who held under the

tenant right system, to receive from such companies compensation for the buildings, as if occupying them on the footing of being entitled to leases thereof; and the guardians of the Appellant granted leases to them under the Act of 1844 for the purpose of enabling them to claim such compensation. This was purely as a matter of favour to the ***168** individuals to whom it was granted, and not an acknowledgment of liability on the part of the trustees and guardians. I am quite satisfied that there was no contract, express or implied.

But the most material and more doubtful question remains to be considered, viz., whether the ground on which the learned Vice-Chancellor has proceeded can be supported; whether there is sufficient proof of that species of fraud committed by Sir John Ramsden, or the other Appellant, on which His Honour relies.

This fraud is in the nature of a personal fraud in Sir John Ramsden as to the transaction in 1837, and in the devisees and guardians in that of the year 1845; and a doubt has certainly passed through my mind whether that fraud, if it was a fraud, was not merely personal, and could in any way affect the estates in respect of which it was committed, in the hands of one to whom it was afterwards transferred, though a mere volunteer. But this point has not been argued, and I will assume that my doubt is unfounded, and that if Sir *John Ramsden* was guilty of the personal fraud alleged, the loss occasioned by that fraud might be satisfied out of the estate itself of the person guilty of the fraud against the Appellant, who is not a purchaser for a valuable consideration, but a mere volunteer. But I still feel a difficulty how the personal fraud of the trustees and guardians, who were not absolute owners, can affect the right of the Appellant, Sir *John W. Ramsden*, who does not claim under them.

But it is not necessary to consider this point, for I entirely agree with my noble and learned friend on the woolsack, that personal fraud of this nature on the part of Sir *John Ramsden*, or his trustees and guardians, on the Respondent cannot be made out

in this case.

If a stranger build on my land, supposing it to be his own, and I, knowing it to be mine, do not interfere, but leave him to go on, equity considers it to be dishonest in me to remain passive and afterwards to interfere and take the profit. But if a stranger build knowingly upon my land, there is no principle of equity which prevents me from insisting on having back my land, with all the additional value which the occupier has imprudently added to it. If a tenant of mine does the same thing, he cannot insist on refusing to give up the estate at the end of his term. It was his own folly to build.***169**

In this case the Respondent had most clearly, and to his own knowledge, nothing but an estate at will in both the first and second take, changed afterwards by the payment of annual rents, to tenancies, in both takes, from year to year. He has been most distinctly and clearly told that he was to be tenant at will, and he most clearly understood so. I have already stated that there was no agreement with the landlord for any farther estate or interest; but if it could have been shewn on the part of the Respondent that the landlord, Sir *John Ramsden*, with respect to the first take, and the trustees and guardians in the second take, believing the tenant to be ignorant of his rights, had purposely allowed him to go on, the case might fall within the same principle as a case of fraud. But no such case has been made out to my satisfaction. There is no expression, encouragement, or conduct, on the part of Sir John Ramsden himself which ought to raise that suspicion. Those on the part of Mr. *Hathorn* which have been given in evidence are all explained by his confidence in the honour and kind feeling of Sir *John Ramsden* and his family. Mr. *Hathorn* was only a sub-agent, and declarations made by him could not affect Sir *John Ramsden* or the proprietors, as those of an agent who had full power to manage the estate, and sell or demise it of his own authority, whose acts would be the same as those of Sir *J. Ramsden* himself would be. He was clearly a subordinate to Mr. *Loch*, if Mr. *Loch* indeed had any

such power, which I much doubt; Those made by Mr. *J. Brook* are open to the same observation. He was not an agent with full power to manage the estate, to sell and demise it of his own authority, so as to make his statements equal to those of Sir John Ramsden himself; and *Brook's* observations, made at the time of the first take, were only an expression of the agent of his confidence in the kind and liberal disposition of Sir *John Ramsden* and his family. As to statements and declarations made by Sir John Ramsden himself bearing on this part of the case, they are only two: one was what passed in the presence of a person named *Mortimer*; the other spoken to by one Mr. *Bryer*, when Sir *John* said the tenant should never be disturbed. These related to different transactions than those in question, and are strictly inapplicable to it, as Sir *John Ramsden* might have reasons for approving of one demise and not another; and even if they applied *170 to *Thornton's* take, they amounted to no more than the expression of kind feeling on the part of the landlord of his own liberal intention, and were not obligatory on him in point of law or equity as a promise. If a man expressly promise upon his *honour*, his promise does not create an obligation in point of law. If what he says must be so understood by those to whom it is addressed, it cannot amount to more, and creates no obligation in point of law. The assurance of agents of their confidence in the honour of their principals and their family cannot carry the case any farther.

I have satisfied myself that this is the true view of the case, and that no liability has been proved on the Appellant in any way, at law or in equity, which is all that we, in the course of our duty, have to decide. What the Appellant, Sir *J. W. Ramsden*, may choose to do, if he succeeds in this suit, is entirely for himself to decide; his obligation, if any, being one binding only in honour.

LORD KINGSDOWN:—

My Lords, I regret that in a case of so much importance as this is there should be any difference of opinion amongst us as to the proper decision of it,

and I should have been glad, if the practice of your Lordships' House allowed me, to withhold the expression of my dissent from the order proposed by the Lord Chancellor. But having submitted, in writing, very fully to your Lordships the grounds of my opinion, without any success, it is unnecessary, and I think it would not be useful, that I should do more on the present occasion than state in a very few words what I understand to be the law upon the subject, and the effect generally which the evidence has produced on my mind.

The rule of law applicable to the case appears to me to be this: If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation. *171 This was the principle of the decision in *Gregory v. Mighell*²², and, as I conceive, is open to no doubt.

If, at the hearing of the cause, there appears to be such uncertainty as to the particular terms of the contract as might prevent a Court of equity from giving relief if the contract had been in writing, but there had been no expenditure, a Court of equity will nevertheless, in the case which is above stated, interfere in order to prevent fraud, though there has been a difference of opinion amongst great Judges as to the nature of the relief to be granted. Lord *Thurlow* seems to have thought that the Court would ascertain the terms by reference to the Master, and if they could not be ascertained, would itself fix reasonable terms. Lord *Alvanley* and Lord *Redesdale*, and perhaps Lord *Eldon*, thought this was going too far; but I do not understand any doubt to have been entertained by any of them that, either in the form of a specific interest in the land, or in the shape of compensation for the expenditure,

a Court of equity would give relief, and protect in the meantime the possession of the tenant.

If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or an allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any Court of law or equity can enforce. This was the principle of the decision in *Pilling v. Armitage*²³, and, like the decision in *Gregory v. Mighell*, seems founded on plain rules of reason and justice.

The whole question, I think, in this case, is, within which class does the present claim fall; a point which, of course, depends entirely on the effect of the evidence. The evidence, in my opinion, shews that it falls under the former. The course adopted by Sir *John Ramsden*, on letting his land, was this: He lived himself at some distance—about thirty miles—from *Huddersfield*. He had a principal agent or steward, Mr. *Bower*, who lived near him, and sub-agents, or persons in his employ, who resided at *Huddersfield*. If any person desired to take a plot of land for building, he applied to the steward or one of the sub-agents, and if the application was *172 approved, the piece of ground required was measured and staked out, and the rent fixed. The applicant then took possession, and built his house, on the completion of which, and not before, he was charged with rent, and was entered as a tenant on the rent-books of the landlord.

Thus far there is no controversy between the parties on this record. The question is, what were the terms held out on behalf of the landlord, and on the faith of which the tenants invested their money? The Appellant insists that the persons thus taking land, and building on it, were of two classes—those who originally contracted for the leases, and those who preferred to hold at lower rents, without lease. He admits that the persons of the former class were entitled to leases renewable for ever on certain terms, but he insists that those who did not originally con-

tract for leases were not entitled at any time afterwards to have such leases granted to them; that they were mere tenants at will in the ordinary legal acceptance of the term; had no light whatever, legal or equitable, against their landlord, but might, as soon as they had completed their buildings, be turned out of them, without any compensation or allowance for their expenditure.

The Respondents, on the other hand, maintain that there was no such distinction as is alleged in the original contracts for land; that those who built and entered on their land without leases, at lower rents, did so on the assurance that they might have leases whenever they required them, and that in the meantime they should not be disturbed in their possessions, or, at all events, not without full compensation.

There is contradictory testimony upon these points; but it appears to me that the preponderance is in favour of the Respondent.

I am unable to reconcile with the Appellant's hypothesis of distinct contracts for leases, what was done under the Act of 1844, the grant of renewable leases in 1846 to twenty or thirty persons, as to whom there is no evidence that any of them had specially contracted for leases, or the language held by Mr. *Loch*, in 1851, when the tenants were alarmed by the apprehension that they would be required to take leases. Unless the tenants at will were entitled to leases, there was no power to grant them under the Act. With respect to the letter signed by *Thornton*, on the application for the *173 second taking, in June, 1845, more reliance was placed upon it in the argument at the bar than I think it was entitled to. The whole force of the observation consists in the use of the words “to hold as tenants at will,” which it is said must mean what the words in their legal sense import. The Respondents contend that these words were used just as they are used in copyholds, tenant at will of the lord, according to the custom of the manor; that the lands, though not copyhold, were dealt with very much in the manner in which copyholds are dealt with; that

the tenant's title consisted in an entry of the name of the taker as tenant in the books of the lord; and that the transfer was made by a similar entry in the same books; and that the term "tenant at will" was used merely to distinguish those who had no leases from those who had leases. I confess that a reference to the rentals in evidence appears to me strongly to confirm this view.

It was argued, that whatever might have been the original position of the parties, the papers which were signed in 1857, on the occasion of the loan made by the *Commercial Inn Money Club*, had the effect of clearly making *Thornton* a tenant at will. Having regard to the circumstances under which they were signed, I can attribute no weight to these papers. No notice was given to the Respondents that any change whatever was intended to be effected in their position by these papers; and it seems to me that no such change could be effected.

By the hypothesis, these gentlemen, the one as tenant and the other as mortgagee, were entitled to a substantial interest in the property, and yet, without any consideration whatever of any kind, they are supposed to have voluntarily converted themselves into tenants at will in the strict sense of the term, liable not only to have their rents raised from time to time, as the landlord might think fit, but to be turned out of possession whenever he pleased.

It seems to me that the right of the parties in this case must be decided in just the same way as if these two papers had never been signed.

I have thus slightly indicated the reasons which induce me to think that the Respondents have made out a case for relief of some kind in a Court of equity. Whether it should be of the kind given by the decree complained of, or in a different form, would, if *174 it were material to consider it, be a very difficult question. But the opinion of the majority of your Lordships makes any consideration of that question unnecessary. Much as I regret that opinion, and the consequences which must flow from it, I am, of course, quite satisfied that it is much more likely to be right than any that I am able

to form.

LORD WESTBURY:—

My Lords, it would hardly be possible for me, at this late hour, to state in detail to your Lordships the reasons why I feel myself compelled, though reluctantly, to concur in the opinion which has been expressed by my noble and learned friend on the woolsack. But it is unnecessary that I should add anything to the clear and, to my mind, satisfactory statement of reasons which has been made by the noble and learned Lord. I shall, therefore, dispense with reading the opinion which I had prepared, inasmuch as the arguments which I should have submitted to your Lordships are substantially the same as those of my noble and learned friend, who has already expressed them in the clearest manner. I agree also in the opinion which he has expressed, that this bill should be dismissed without costs. Unquestionably, I do not believe that the Appellant desires that costs should be given; but whether that is so or not, I think your Lordships will act rightly in reversing the decree appealed from, and dismissing the bill without costs. Decree reversed; cause remitted to the Court of Chancery, with a declaration that the bill ought to have been dismissed. *Lords' Journals*, May 11, 1866.

1. These terms are not here stated, because they are referred to very fully in the judgments of their Lordships. As their judgments depended upon their appreciation of the facts and evidence in the case, the detailed statements of those facts will be best sought for in the judgments themselves.

2. *Thornton and Dyson v. Ramsden*, 4 Giff. 519.

3. 12 Ves. 78.

4. 18 Ves. 328.

5. 1 Ch. Rep. 1; 1 Wh. & Tu. Leading Cases, 442.

6. 5 My. & Cr. 167.

7. 3 Sm. & Giff. 449; 1 De G. & J. 34.

8. 3 De G. & J. 204.

9. 8 De G. M'N. & G. 79.

10. Id. 357.

11. 3 Giff. 363.

12. 3 Bro. C. C. 153, 169.

13. 2 Atk. 83.

14. 12 Ves. 78.

15. 3 Atk. 692.

16. 7 Ves. 231.

17. 25 Beav. 72.

18. 3 De G. M'N. & G. 571.

19. 1 Y. & C. Ch. 345.

20. 1 Sch. & Lef. 52.

21. 8 East, 308.

22. 18 Ves. 328.

23. 12 Ves. 78.

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