but had not given him the deed when death came. James Shields lived in the homestead, and also worked the farm bought for Andrew. The homestead was subject to a mortgage or mortgages. The funeral expenses and some debts were paid by the proceeds of the sale of cattle, and the remainder from the crops raised on the homestead.

For a year or so after the death, the family (except Martha) worked along together "for the benefit of all;" then George left, and Andrew went to the farm bought for him, and remained there at least part of the time thereafter until he sold it, in 1914. In that year he got a conveyance of that farm from the remainder of the family. Andrew having sold his farm, the rest of the family at home borrowed $8,000 from him; and on the 12th May, 1914, a mortgage was given by the widow and five of the children, Jessie, George, John, Martha, and Catharine, to him for $8,000. William had died the previous month, and James had left some years before.

Some argument was based upon this mortgage as operating against the plaintiff's claim; but there was no estoppel—the plaintiff did not execute the mortgage-deed, the action was not brought upon the deed, and there was no recital that the mortgagors had the fee. There was the usual covenant "that the mortgagors have a good title in fee simple to the said lands;" but a covenant that a person has a thing is not equivalent to a positive statement that he has it; and an estoppel can arise only if there be an express averment that the person is seised in fee, has the legal estate, etc.: General Finance Mortgage and Discount Co. v. Liberator Permanent Building Society (1878), 10 Ch.D. 15; Right d. Jefferys v. Bucknell (1831), 2 B. & Ad. 278; Heath v. Crealock (1874), L.R. 10 Ch. 22.

Another deed produced was a conveyance, dated the 17th January, 1914, to one Wilson, of the trees and timber on the north half of the homestead lots, executed by the widow, George, Andrew, Jessie, Martha, Catharine, and James. This was ineffective as an estoppel, for similar reasons.

There were only two things to be considered: (1) the real substance of the arrangement whereby Andrew got his deed in 1914; (2) the effect of the occasional visits of Andrew to the homestead during the 10 years before the beginning of this proceeding.

Enough appeared to indicate that—George having already got his farm—all parties intended that the deed to Andrew should be in full of his share of the estate, and that such was the understanding implied if not expressed.

But the Master had found against the plaintiff on the facts;