his heirs and assigns. In legal effect, therefore, they did convey no more than Oliver's right, title and interest in the property; and under such circumstances it is difficult to conceive how he can claim protection as a *bona fide* purchaser for a valuable consideration, without notice, against any title paramount to that of Oliver, which attached itself as an unextinguished trust to the tracts." As late as 1870 the same Court, in the case of *May* v. *Le Claire*, 11 Wallace, 232, uses the following language. "On the 27th of July, 1859, Dessaint conveyed by a deed of quit-claim to Ebenezer Cook. The evidence satisfies us that Cook had full notice of the frauds of Powers, and of the infirmities of Dessaint's title. Whether this was so or not, having acquired his title by a quit-claim deed, he cannot be regarded as a *bona fide* purchaser without notice. In such cases the conveyance passes the title as the grantor held it, and the grantee takes only what the grantor could lawfully convey," and cite in support of this doctrine, in a foot note the case of *Oliver* v. *Piatt*. These cases have been assailed, and it is urged that the case of *Oliver* v. *Ptatt*, when properly understood and construed, holds no such doctrine. But it will be observed that the U. S. Supreme Court so construes it, and it is also understood and cited as authority on this point by the Supreme Court of the State of Alabama, which says: "The case of *Oliver* v. *Piatt*, 3 Howard. (U. S.) 410, which is cited with approval in 11 Alabama, 1067, fully sustains us in the position that the bank, holding a mere quit-claim deed, cannot be regarded as a *bona fide* purchaser for a valuable consideration without notice."

Smith heirs v. *Bank of Mobile*, 21 Alabama, 124. This Alabama case is cited with approval in support of the same point, by the Supreme Court of Texas, in the case of *Rogers* v. *Burchard*, 34 Ter., 441.

The Supreme Court of Maine, in the case of *Bragg* v. *Paulk*, 42 Maine, 502, lays down the doctrine that "a deed which simply purports to pass the right, title and interest of the grantor will not exclude the operation of a prior unregistered mortgage." "By a deed which, from its terms, conveys only the right, title and interest of the grantor, the grantee does not obtain anything which the grantor had previously parted with, although the subsequent deed was first recorded."

This doctrine is clearly laid down by the Supreme Court of Minnesota, in the cases of *Martin* v. *Brown*, 4 Minn., 282; *Everest* v. *Ferris*, 16 Minn., 26; *Marshall* v. *Roberts*, 18 Minn., 405, and other cases to which I have not access. It is contended by counsel for defendants that the Court bases these decisions on a particular statute of that state, which reads as follows: "A deed of quit-claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale." It is true that the Court seems to hold that this statute is a limitation upon the estate passed by a quit-claim deed, and yet it is but virtually the embodiment of the principle laid down by other courts in the cases above cited. If, indeed, it conveys all that a party could lawfully convey by a deed of bargain and sale, what more could possibly be claimed for it independent of any statute? This view seems to be borne out by section 479 of our civil code.

But it is further contended that this view is in conflict with the provisions of our recording act, and definition of a conveyance, which are substantially the same as the Minnesota statute.

This objection is satisfactorily answered by the Court in the case of *Marshall* v. *Roberts*. supra: "These provisions, as will appear upon a moment's reflection, so far from militating against the views expressed in the cases cited, come to their aid, since it is only the purchaser of the same real estate, or any portion thereof, who, by his priority of record cuts out the title of a prior purchaser. For when the second purchaser obtains by his quit-claim deed only what his grantor had (his right, title and interest) at the time when such deed was made, he is not a purchaser of the same real estate, (or any part thereof,) which his grantor had previously conveyed away, and therefore no longer has."

I am therefore inclined to hold to the doctrine laid down in these cases. My attention has not been called to any conflicting opinion where the point has been fairly raised and passed upon. And I am further of the opinion that the special covenants in these deeds to Evans do not change their character or vary the rule * * * Burbank cannot stand as a *bona fide* purchaser without notice. But be this as it may, if we apply the doctrine laid down in the case of *Marshall* v. *Roberts*, *supra*, Burbank took nothing under his deed from Evans, as Evans had nothing to convey, and the terms of the quit-claim deed to Evans was notice to Burbank of the rights which had been conferred on Smith, Titus' prior grantee. The Court therefore finds the equities of this cause with plaintiff, and that the deeds to defendants are fraudulent and void, as against him.