

ANNOTATION ON ABOVE CASE FROM D.L.R.

The principle that a conveyance of all a man's estate and interest for value will cover every interest vested in him is important and well established.

Elphinstone on the Interpretation of Deeds, Rule 60, expresses it thus: Where a party conveys all his estate, or right, or title, or interest in property to purchaser for value, every interest vested in him will pass by the conveyance, although not vested in him in the character in which he is made a party.

"This is clear, that when a person having several estates and interests in a denomination of land, joins in conveying all his estate and interest in the lands to a purchaser, every estate or interest vested in him will pass by that conveyance, although not vested in him in the character in which he became a party to the conveyance. It is true that in *Fausset v. Carpenter* (2 Dow. & Cl. 232, S.C. 5 Bl. N.R. 75), the House of Lords took a different view. At the time when that case was decided, it was thought impossible to maintain the decision, and it was a subject of consideration among the profession whether it would not be advisable to bring in a short Act of Parliament to reverse it. That case cannot operate to weaken the rule of law. Nothing could be more mischievous or contrary to law than to hold that when a party professes to convey all his estate and interest in particular lands, the operation of his conveyance should be limited to the estate which was vested in him in the character in which he purported to join in the conveyance." *Per* Lord St. Leonards, C., in *Drew v. Earl of Norbury*, 3 J. & L. 267, 284, 9 Ir. Eq. Rep. 71, 524.

"*Primâ facie*, when a person conveys or settles an estate, he means to include in the conveyance every interest which he can part with and which he does not except. General words apt for that purpose are invariably used. *Per* Lord Cranworth, C., in *Johnson v. Webster*, 4 DeG. M. & G. 474, 488.

"Where a grantor possesses distinct interests in the property described and there is nothing in the deed to indicate that this entire interest was not conveyed, but on the other hand an intention to convey whatever interest he had in the property may be gathered from the instrument, it should be construed in accordance with that intention." 13 Cyc. 656.

In the case of *Hayden v. Cameron*, the above rule applies, for, while the discharge of mortgage under consideration was not in terms a conveyance but a mere certificate of payment, it is provided by statute (C.S.N.B. (1903), ch. 151, sec. 58) that such a certificate "shall discharge the mortgage and revert the legal estate in the mortgagor, his heirs or assigns," and the Privy Council in a late case has lucidly expressed the effect of such a discharge of mortgage under the Ontario statute in the following words:—

"A very simple procedure for the discharge of mortgages and the revesting in the mortgagor of his former estate in the property mortgaged is provided by secs. 62 and 67 of the Registry of Deeds Act (R.S.O. 1914, ch. 124). A form of document called a discharge has merely to be filled up and authenticated in the manner prescribed. On this being duly registered the mortgage debt is discharged, and the legal estate reverted in the mortgagor." *Brickles v. Snell*, 30 D.L.R. 31 at 37. See also *Lawlor v. Lawlor*, 10 Can. S.C.R. 194.