which I decide as the aggregate valuations of the said Town of Simcoe and of the said Townships of the said County of Norfolk for the present year for County purposes.

ENGLISH REPORTS.

CHANCERY.

Booth v. Curtis.

Goodwill an incident of the premises, and not personal to the trader.

[V. C. S., 17 W. R. 393]

Goodwill is sometimes, but incorrectly, viewed as something of a personal nature, appertaining to the person who carries on the business, and not to the premises where the business is carried on. So far as it consists in the connection to which the departing trader is able to introduce or recommend his successor, the former view is correct; but goodwill, properly speaking, is an incident of the premises, and inseparable from them, it being definable as the probability that customers who have before resorted to the shop will do so again, and presupposes the continued existence of the shop, so that by the removal of the shop the goodwill properly so called, is at an end. Thus, in the recent case of *King* v. *The Midland Railway Company*, 17 W. R. 113, the Vice-Chancellor Giffard held the mortgagee of a shop entitled to the price paid for the goodwill of the business where the shop had been sold to the railway company, on the ground that the mortgage included it as an incident of the premises; and in the case before us, where the lease of a freehold public house had been sold and a premium realised, the third of such premium was claimed by the widow of the intestate owner, as being in fact the consideration for the goodwill, and, therefore, personal estate. But the Vice-Chancellor Stuart held that the goodwill could not be separated from the fee simple, and was in other words an incident of it.

Morton v. Woods.

Mortgage—Landlord and tenant—Tenancy at Will.

[Ex. Ch., 17 W. R. 414.]

Two points of considerable importance were decided in this case. The plaintiffs having already mortgaged their land once, mortgaged it again to the defendants. The mortgage deed recited the fact of the first mortgage, and also provided that the plaintiffs were to become tenants to the defendants, at a specified rent for ten years, but that the defendants might at any time re-enter and determine the lease. This deed was executed by the plaintiffs, the mortgagors, but not by the defendants, the mortgagees, but the plaintiffs remained in possession. Subsequently, before any rent had been paid, the defendants distrained upon the plaintiffs for the agreed rent, and the plaintiffs raised the question whether there was any tenancy at all between the parties.

They contended that there was no tenancy, first, because the defendants had no legal estate at all in fact, or, as this appeared on the face of the deed by estoppel either. Secondly, that as the intention of the deed was to create a term of ten years, and, as this had not been carried out in consequence of the non-execution of the deed by the plaintiffs and as no rent had been paid there was nothing to shew that any tenancy at all had been created

The doctrine of estoppel by deed, viz, that "no man shall be allowed to dispute his own solemn deed" (*Goditite* v. *Bailey*, Cowp. 601), is well known, and if a lessor purport to grant a lease, he is estopped from affirming as against his tenant that he had no legal estate to grant. There are several cases, however, which are often cited to prove that here is no estoppel when the real facts appear on the face of the deed, and in *Morton* v. *Woods*, reliance was placed on those cases as showing that the plaintiffs were not estopped from saying that there was no tenancy, as there was no legal estate in the plaintiffs out of which a tenancy could have been created, and as this appeared on the face of the mortgage deed. On this point judgment was given for the defendants, following *Jolly* v *Arbuthnot*, 7 W. R. 127, on the ground that there was an estoppel, and that the plaintiff, therefore, could not deny on this ground that they were tenants to the defendants.

The Court decided also in favour of the defendants that there was a tenancy which entitled them to distrain for the rent reserved As no deed had been executed creating a term of ten years, it was clear that under 29 Car. 2, c 3 and 8 & 9 Vic. c. 106, no such term existed, but the court were of opinion that there was a tenancy at will and at the amount of rent mentioned in the deed.

The decision of this latter point is not based upon any general proposition of law, that a tenancy at will is created at the agreed rent wherever there is an agreement for a tenancy for a certain time at a fixed rent and entry is made, but no actual tenancy is created on the agreed term for want of a deed under 8 & 9 Vic. c. 106. Such an inference from the judgment is expressly guarded against. The court say, "It is contended that as the parties intended to grant a lease for ten years, it is contrary to that intention to hold that an estate at will was created. That might, perhaps, be so in an ordinary case of a mere lease for years between landlord and tenant, but this instrument is a mortgage, and these further provisions which relate to the tenancy are all meant as a further security for the repayment of the interest, and the intention of the parties must be gathered from the whole instrument."

Although the application of this decision is thus restricted it will often be quoted for a tenancy between mortgagor and mortgagee is often created by a mortgage deed. It is convenient for both parties, as it gives the mortgagor a right to the legal possession of the land as long as he pays the interest, and it also gives the mortgagee an additional security for the recovery of the interest by distress. *Morton* v. *Woods* will also be often cited on the other branch of the decision, as it adds the authority of a judgment of the court of Exchequer Chamber to the principle laid down in the Court of Chancery in *Jolly* v. *Arbuthnot*.