

agreement filed in the case. When, therefore, he found himself without evidence, he ought, in order to save his rights, to have become nonsuit, and then by a new suit, he might have obtained justice. But by some strange misapprehension, a verdict was suffered to pass against him; and whatever may be the real justice of his claim, he is now without redress, unless we grant him a new trial.

Riley  
v.  
Emerson.

We shall, on the whole, grant a new trial, but it must be upon terms that will place the parties in the same situation in which they would have been, had a nonsuit been entered.

**G. KIMBALL *versus* E. BLAISDELL.**

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A conveyed a tract of land to B, and afterwards he conveyed the same tract to C, with warranty against all persons claiming by, through or under A. B afterwards reconveyed the land to A, and D, a creditor of A, extended his execution upon the land, as the land of A—it was held, that the reconveyance to A, enured to the benefit of C, and that D was estopped by the warranty to claim the land against C.

THIS was a writ of entry and was submitted to the decision of the court upon the foregoing facts.

One John Brown, being seized of the demanded premises, on the 4th May, 1827, conveyed the same to Gordon Burley, who afterwards gave Brown a bond to reconvey the land upon the payment \$200.

On the 21st November, 1828, Brown conveyed the same premises to the demandant, with warranty against the claims of all persons claiming by, from, or under him the said Brown.

Kimball  
v.  
Blaisdell.

On the 29th April, 1829, the demandant having the bond given by Burley, as aforesaid, paid Burley \$225, and took a deed of the land in the name of Brown. The demandant never had possession of the land.

After the 29th April, 1829, the tenant having notice of all the deeds above mentioned, and of the said bond, caused an execution, which he had obtained against Brown, to be extended upon the demanded premises. The tenant had no notice that the money paid to Burley was paid by the demandant.

*Blaisdell*, pro se.

*Kimball* and *J. Parker*, for the demandant—

To show that the warranty in this case operated as an estoppel against the title attempted to be set up by the tenant, it being a warranty against that title, cited *Co. Litt.* 265, a ; 14 *Johns.* 194 ; *McCracken v. Wright* ; 1 *Cowen*, 616 ; 9 *Cowen*, 18, *Jackson v. Winslow* ; 3 *Pick.* 52, *Somes v. Skinner*.

*RICHARDSON*, C. J. delivered the opinion of the court.

John Brown had nothing in the land, when he conveyed to the demandant, and it is clear, that the demandant cannot recover in this action, unless he can avail himself of the title, which Brown subsequently acquired.

If the tenant had been apprised of the fact, that the money paid to Burley was the money of the demandant, and paid on his account, before he extended his execution upon the land, it would be a fraud in him now to claim the land against the demandant. The resulting trust would have constituted a good title to the land as against this tenant. 3 *N. H. Rep.* 170, *Scoby v. Blanchard* ; 4 ditto, 397, *Pritchard v. Brown*.

But it does not appear, that the tenant had notice of the trust in any way, and the demandant cannot recover on the ground that there was a resulting trust, of which the tenant had notice.

The only ground, on which the demandant can now

Kimball  
v.  
Blaisdell

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recover the land, is, that John Brown, and those claiming under him, are estopped by his deed to the demandant, to claim the land against the demandant.

We shall, in the first place, consider, whether John Brown himself is estopped by that deed to claim the land?

There are cases, in which an estoppel binds the land, and creates an estate and interest in it. If A convey lands to which he has no title, to B, with warranty, any title which A may subsequently acquire, will enure to the benefit of B, and A cannot claim the land against his deed. 16 Johns. 110, *Jackson v. Stevens*; 13 ditto, 316, *Same v. Same*; 1 Johns. Cases, 81, *Jackson v. Bull*; Plowden, 434; 9 Cranch, 53; Co. Litt. 47, b, and 265, a; 3 Pick. 52, *Somes v. Skinner*; 12 Johns. 201, *Jackson v. Murray*; 2 D. & E. 171; Com. Dig. "Estoppel," E. 10; 1 Starkie's Ev. 301; 5 Greenl. 227, *Allen v. Sayward*.

But it is otherwise, where one conveys by mere release, land to which he has no title. In that case, a title subsequently acquired by him will not enure to the benefit of him to whom he released. 1 Cowen, 613, *Jackson v. Hubble*; 14 Johns. 193, *Jackson v. Wright*.

In this case, the warranty of Brown was not general, but limited to any title to be derived from, by, or under him. But we are of opinion, that this warranty, under the circumstances of this case, has the same effect to create an estoppel, that it would have had, had it been a general warranty, and that if this suit had been against Brown, he would have been estopped to set up any title under the conveyance made by Burley to him.

The next question is, whether this tenant is estopped to set up that title?

The general rule is, that all privies in blood, privies in estate, and privies in law, are bound by an estoppel. 1 Starkie's Ev. 305; 4 Peter's S. C. R. 84—88; 2 B. & A. 242, *Helps v. Hereford*; 3 D. & E. 371; 4 Coke, 53.

This tenant has the estate of Brown, if any thing,

and there is nothing stated in this case, to take it out of the operation of the general rule, and we are of opinion that the the tenant is estopped to set up any title under Brown, and that there must be

*Judgment for the demandant.*

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### R. M. BARNARD *versus* JAMES MARTIN.

In a conveyance of land, a general description of the premises conveyed may be restricted and restrained by a particular description.

THIS was a writ of entry, brought to recover a tract of land in Bath, in this county, and was tried here, upon the general issue, at May term, 1830.

It was agreed, that Samuel Austin was once seized of the demanded premises. The demandant claimed the land, under an extent, by virtue of an execution in his favor against Samuel Austin. In the return of the extent was the following clause:—"I caused a part of said gore to be set off to said Barnard, as herein particularly set down, said gore being part of the late home farm of said Austin."

The tenant claimed under a deed made by Austin previous to the said extent, by which he granted to the tenant a tract of land described as follows:—"my homestead farm in Bath, aforesaid, that I now live on, and improve, it being the same land conveyed to me and one John Martin, by one Caleb Bailey, by his deed of December 2d, 1816, and the said Martin's half of which he conveyed to me by his deed of December 19, 1825." The demanded premises were not parcel of the land described in the said deed of December 2d, 1816, but were conveyed by said Caleb Bailey, to said Samuel Austin, in the year 1818, or the year 1819, being a gore adjoining the