

KILLOREN & a. v. MURTAUGH.

A person in possession of land, who without fraud or mistake recognizes the title, and promises to pay rent to another who has bought and claims the land, and continues in possession under an agreement to pay rent, is estopped from denying the title of such other person in an action upon the landlord and tenant act.

ACTION, upon the landlord and tenant act. G. L., c. 250. Plea, soil and freehold. Facts found by the court. The plaintiffs acquired their title by deed from one Wilson, dated December 12, 1884. At the date of the plaintiffs' purchase the defendant was in possession of the premises, and had been for seven or eight years, and had not paid rent, and it did not appear that he was ever in as tenant of the plaintiffs' grantor. Immediately after their purchase the plaintiffs called upon the defendant, claimed to own the premises, and asked him to attorn to them, and he did so, agreeing to pay them twenty dollars per month rent. When called upon for the rent at the end of the first and second months, the defendant said he would pay it, but asked for delay on account of the dull times. The rent not being paid at the end of the third month, this action was commenced. The defendant claimed the action could not be maintained.

J. Kivel, for the plaintiffs.

Copeland & Edgerly, for the defendant.

CLARK, J. By the agreement of the defendant to pay rent to the plaintiffs, the relation of landlord and tenant was established between the parties, and the action can be maintained. *Hatch v. Bullock*, 57 N. H. 15; *Plumer v. Plumer*, 30 N. H. 558; *Russell v. Fabyan*, 27 N. H. 529; *Lucas v. Brooks*, 18 Wall. 436.

Judgment for the plaintiffs.

BINGHAM, J., did not sit: the others concurred.

DAVIS & a. v. DURGIN, *Adm'r*, & a.

A decree of partition not appealed from in a court of probate is conclusive upon the parties and their privies as to the state of the title at the time of its rendition, and constitutes a bar to a claim of a greater interest in the land than the share decreed to them.