IRELAND.

FROM THE COURT OF EXCHEQUER.

Sir ROBERT LYNCH BLOSSE, bart. and FRANCIS LYNCH BLOSSE, his eldest Son, an Infant, by the said Sir ROBERT LYNCH BLOSSE, his Father, next Friend, and Guardian - - - - - - - - } *Appellants.*

The Right Hon. JOHN LORD CLANMORRIS and GEORGE RICHARDS, Esq. - - - - - } *Respondents.*

LANDS being settled by *H.* upon the sons of *R.* successively in tail male, with divers remainders over, and the ultimate reversion to *H.* and his heirs. *H.* is attainted of high treason, and afterwards *B.* the issue in tail, being in possession under the limitations of the settlement, suffers a recovery. Whether it is effectual to bar the reversion vested in the Crown by the attainder.—*Quære.*

A TITLE, depending upon a recovery suffered by a Tenant in tail of lands, the reversion of which had vested in the Crown by attainder of the reversioner, is not such a Title as a purchaser is bound to accept.

A purchaser brought into Court upon a doubtful title ought to be discharged with costs.

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SIR Henry-Lynch, baronet, being seised in his demesne as of fee, of divers lands in the barony of Carra, in the county of Mayo, in Ireland, in the year 1684, granted and released the said lands to the

use of the first and other sons of Robert Lynch, severally and successively in tail male, with divers remainders over, with the ultimate limitation to the right heirs of Sir Henry Lynch.

After the date of this deed Sir Henry Lynch was attainted of high treason.

In the year 1779 Sir Henry Lynch Blosse became seised of the lands under the limitations of the deed, as tenant in tail male; and in Michaelmas Term 1779 suffered a common recovery of the lands to the use of himself in fee.

By his will, bearing date the 18th day of February 1788, Sir Henry Lynch Blosse gave certain legacies and annuities, to be raised by sale or mortgage of his lands in Ireland; and, subject thereto, he gave all his real estates in Ireland to the use of his nephew, the Appellant Sir Robert Lynch Blosse, for life, with divers remainders over.

Sir Henry Lynch Blosse died in February 1788, leaving the Appellant, Sir Robert Lynch Blosse, a minor.

During the minority of Sir Robert Lynch Blosse several of the incumbrances affecting the lands were paid off by his guardian, out of the savings of the estates; and Sir Robert Lynch Blosse himself, after he came of age, paid off more of the incumbrances with his own money. The securities were assigned to the Respondent George Richards, in trust for the Appellant Sir Robert Lynch Blosse.

In 1811 the Appellant, Sir Robert Lynch Blosse filed a bill in the Court of Chancery in Ireland, in the name of George Richards, against himself, and the Appellant, Francis Lynch Blosse,

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his eldest son and others, praying an account of the debts and legacies of Sir Henry Lynch Blosse, and that the same might be paid, or in default thereof, that a sale might be had of a competent part of the estates, for payment of the debts and legacies, pursuant to the trusts of the will.

In consequence of proceedings under the decree made in the cause, Brabazon Browne, in trust for the Respondent, John Lord Clanmorris, became the purchaser of several denominations of the lands. On the 17th of November 1815, by an order made in the cause, it was referred to the Master to inquire and report, whether a good title could be made out to the purchaser, and whether any and what act was necessary for that purpose.

On the 7th of December 1815 the Master reported that a good title in fee-simple could be made to the lands; and that the only acts necessary were to procure a certain judgment affecting the lands for 60,000 *l.* to be assigned to a trustee to protect Lord Clanmorris, and the other purchasers. An objection was taken to this report on the part of the Respondent, Lord Clanmorris, upon the ground that, after the settlement made by the indentures, bearing date the 16th and 17th days of July, 1684, Sir Henry Lynch was attainted of high treason, whereby and by virtue of the several statutes in force in Great Britain and Ireland, the reversion in fee-simple, limited by the settlement to the right heirs of Sir Henry Lynch, became forfeited to and vested in the Crown, and could not have been effectually barred or destroyed by the common recovery suffered by Sir Henry Lynch

Blosse, and that therefore the said title was defective.

On the 3d of February 1816 an application was made to the Master of the Rolls, *to set aside the report* *, which was ordered, on the grounds of objection before stated.

The Appellants acquiesced in the last-mentioned order, and on the 10th of February, 1816, by an order made, on the application of the Appellants, it was referred to the Master in the cause, to inquire and report whether any and what acts were necessary to be done to make out a good and sufficient title; the Appellant, Sir Robert Lynch Blosse, undertaking to procure such report within a week; and if any acts were necessary to be done, it was further ordered that the said Master should report within what period of time the same ought to be completed, if reasonable diligence should be used, the solicitor for the Respondent undertaking to attend before the Master on the first summons.

In pursuance of this order the Master made his report on the 19th day of February, 1816, that a good and sufficient title could be made out to the Respondent, *in case* the commissioners for executing the office of Lord High Treasurer of Ireland, by and with the consent of the chief governor of Ireland, should conceive themselves warranted to grant the reversion in fee of the said lands under and by virtue of the powers vested in them by the Act of the forty-sixth of George the Third, chap. 123 †;

* See the observation of Lord Redesdale, p. 71.

† An Act to amend several Acts for the Sale of (Crown Rents, &c., and) certain Lands forfeited and undisposed of in Ireland.

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and if that could not be obtained, that a good title to the said lands could be made out to the Respondent, by means of a private Act of Parliament, to be obtained by the Appellants; and the Master further reported, that such grant or private Act of Parliament might be procured with reasonable diligence in the course of the then session of Parliament; and he further reported, that the Appellants, procuring a certain judgment for 60,000 *l.* to be assigned to a trustee to protect the said purchase, would secure the purchaser against any outstanding judgments that might remain unsatisfied.

This report was confirmed, and afterwards the Appellants appealed from the order of the 3d day of February, 1816, to the Lord Chancellor, who, by an order dated the 12th day of March 1816, refused the Appellants application, and affirmed the order.

The Appeal to the House of Lords was against the orders of the 3d of February, and the 12th of March 1816.

Against the order confirming the report of the 19th of February, 1816, there was no appeal.

For the Appellants, *Mr. Wetherell*, *Mr. Shadwell*, (and *Mr. Blake*.)

31st Jan. 1821. The question in this case is, whether a reversion, after an estate-tail vesting in the Crown by attainder of the reversioner, can be barred by a common recovery suffered by the issue in tail when in possession. The Crown can only take the reversion subject to all its original properties and incidents. The King can take no more than the party by forfeiture lost.

The reversion, while it belonged to the original reversioner before the attainder, was subject to the right of the tenant in tail, to be destroyed by a recovery.

Lord Redesdale:—Is there any Irish statute similar to the English statute 34 Hen. 8, saving the rights of the Crown?

For the Appellants:—There is not *. That statute has been held by construction to apply only to estates-tail created by the Crown †. The principle of that construction applies equally to remainders aud reversions not flowing out of the Crown. A reversion vesting in the Crown by grant, subject to a condition, may be barred by the recovery of the tenant of a particular estate ‡. Where the estate vests in the Crown by forfeiture, the same principle applies ‖.

* See Mr. Butler's note (323) to Co. Litt. 372, b.

† Co. Litt. 372, b.

‡ Chomley's case, Rep. 2. 52, & Moor, 342. In Coke's Rep. the case is put thus in one of the points resolved.

" A man makes a gift in tail, the remainder in fee; he in " remainder grants his remainder to another for life; the re- " mainder to the queen in fee, upon condition, *ut supra*, tenant " in tail suffers a common recovery; if this recovery shall bar " the estate of tenant for life in remainder, and the condition " also, is the question. And it was resolved, that the re- " covery doth bar, not only the estate-tail, but also the " estate for life, although the remainder of the fee was in the " queen; *for it is out of the stat. of* 34 *H.* 8, *c.* 26, because the " estate-tail was not of the queen's gift," &c. fo. 52. " And " by operation of law, the estate for life being defeated, the " remainder to the Queen, which depends upon it, shall be de- " feated also," fo. 53.

‖ See *Nicholles* v. *Nicholles*, Flowden, 481. 486; and Walsingham's Case, Id. 552, 3.

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Lord Redesdale:—Have you considered the effect of the statute *de donis**, as to reversions in the Crown; how far the principles on which the Courts have permitted parties to suffer recoveries of estates-tail, and reversions upon them, affect the Crown? It must be argued, on authority; there is no intelligible principle †.

For the Appellant.—The effect of the statute *de donis* ought to be the same as to the King and private persons. Can it be contended that a reversion vesting in the King by the felony of the reversioner, or upon a conveyance by the most remote remainder-man, would deprive the tenant in tail of his right to bar the reversion by a recovery?

How does a recovery operate? By enlarging the estate-tail into a fee. If therefore the recovery bar the estate-tail, it ought to bar the remainders over, and reversions also, of which the fee-simple is composed. A recovery puts the estate-tail under the statute, in the same situation as the alienation by the donee in tail after issue born put the gift in

* 13 Ed. 1. In Magdalen College, Case, 11 Rep. 72, &c. it is resolved, that the stat. *de donis* binds the King, although he is not named, because it is a remedial statute. By parity of reason, the statute of fines, 4 & 5 Hen. 7, c. 24, binds the King where the estate-tail is not of his gift, &c. But whether the *practice* of his courts, as to recoveries, which has in effect repealed the statute as to gifts by a subject, can affect the King's right to a reversion vested in him by grant, *bonâ fide*, or by operation of law, *quære*. In Pelham's Case, 1 Rep. 16, citing 18 Ed. 3, 28. b; 25 Ed. 3, 48. a, it is holden, that a recovery by assent, without title, shall not divest a remainder or reversion out of the King, because, &c. it is but a conveyance. See Walsingham's Case, Plowd. 553, a, b. Nor a recovery by tenant in tail, Pigott, 86.

† See the observations of Sir W. Lee, C. J. in giving judgment in *Martin* v. *Strachan*, 1 Wils. 73.

tail before the statute *de donis*. The decision in the great case upon the validity and effect of recoveries, rests expressly upon this principle, that "he "who claims by another cannot be in a better estate "of right than he through whom he claims*."

For the Respondents, the *Attorney General*, and *Mr. Horne*.

It is fully established, that a remainder or reversion vested in the Crown, and expectant on an estate-tail, cannot be barred by a common recovery suffered by the tenant in tail †. If that point were doubtful, yet, according to the rules of a Court of Equity, a purchaser is not compelled to accept a title subject to a serious doubt as to its validity.

The Lord Chancellor, after stating the facts and

* *Hunt* v. *Gately*, Moor, 154. See also Piggott, 85, where he says, it is *vexata questio* how far *at common law* a remainder vested in the King was devested by recovery and discontinuance.

In Wiseman's Case, 2 Rep. 15, which was a conveyanee in remainder to the Crown, expressed to be for the purpose of creating a perpetuity, the fourth of the resolutions upon which the judgment in favour of the recovery is founded, is that "by such "secret limitations of the remainder to the Queen, purchasers "are deceived, and the tenant in tail in possession deprived of "the power which the law giveth him to cut off the remainder, "&c." See the fifth resolution.

See also Nevil's Case, 7 Rep. 121; Mary Portington's Case, 10 Rep. 35; Lord Chesterfield's Case, Hardres, 409, Piggott, 88; *Martin* v. *Strahan* 1 Wilson, 73.

† Shepherd's Touchstone, 42, (Preston's edition); Lord Nottingham's MSS., Hargrave and Butler, Co. Litt. note (323) to Co. Litt. 372, b; Brooke's Abr. Assur. pl. 6; Taile, pl. 41; 2 Rolle's Ab. Com. Rec. (A); Lutwych, 848, 9; Vin. Abr. Com. Rec. (z); Com. Dig. Estates, B. 31; see also the stat. 26 Hen. 8, c. 53; 13 Hen. 8, c. 20; 34 & 35 Hen. 8, c. 20; 27 Eliz. c. 1; 11 Wm. 3, c. 2; 1 Anne, stat. 2, c. 21; 46 Geo. 3, c. 123.

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proceedings in the case, observed, that there was no appeal against the order confirming the last report; which might create a difficulty as to further proceedings, if the judgment upon the other orders should be reversed.

The question was, whether a reversion vested in the Crown by forfeiture, and not by original grant, could be barred by a recovery: whether the doctrine of law upon that point could be stated to be so clearly against the Crown that a purchaser ought to be compelled to take an estate with such a title. That the law as to estates-tail, under the stat. 34th Hen. VIII, was clear and settled; but not so with respect to such a reversion as now was in question. That he could not advise the House, sitting as a court of equity in appeal, to hold a purchaser to the contract in a case, where it could not be stated as a matter free from doubt, whether the reversion had been barred by the recovery; and as the purchaser had been brought into Court upon a doubtful title, he ought to be discharged with costs.

Lord Redesdale:—That a reversion vested in the Crown, but not reserved upon a gift by the Crown, may be barred by a recovery, there is no authority but in one loose report *, which is contradicted by

* *Quære*, The *Nota* in Hardres, 409; and see *Murry* v. *Eyton* and *Price*, 2 Show. 104; and S. C. T. Raym. 338; Pollexfen, 491; Tho. Jones, 237; Skinner, 95. In this latter Case the question was, whether the estate-tail was barred by a fine. According to the note in Hardres, it was adjudged in the C. P., upon advice with all the other Judges and Barons, that after a conveyance and re-grant, a reversion in the Crown might be barred by tenant in tail of the gift of the Crown or the issue; and the case is cited in Pigott, 90. On this point, see the *dict.* of Street, Baron, *arg. pro*, 2 Shower, 109, *ad finem*, and Sir Tho. Jones, 251, *contrá*.

every other case. The case in Rolle's Abridgment * is decisive on the point. Pigott †, in one passage, treats it as a disputable point at common law. Cruise ‡ seems to understand the law on this subject, as it is laid down in Rolle, and refers to the practice of levesting the reversion of the Crown by act of parliament, to enable the tenant in tail to make an effectual recovery. The practice is important as evidence of the state of the law. General opinion is certainly against the title. In this case it is not necessary to come to any precise decision on the point. It is sufficient, on the question now before the House, if the law be doubtful. A purchaser has a right to require a marketable title; and this title, it must be admitted, rests on a point of law which at least is doubtful. This being so, the purchaser who has been obliged to keep his money in readiness, and deprived of the opportunity of vesting it in another purchase, has been hardly used, and is entitled to his costs. The proceeding in the Court below, of setting aside the report, is extraordinary practice.

26 *Feb.* 1821.

It appearing to the Lords that the title offered to the Respondent, Lord Clanmorris, at the date of the Report of the 7th December 1815, was not such a title as a purchaser was bound to accept under the circumstances stated, &c.; It is therefore ordered and adjudged, that the said petition and appeal be dismissed, and that the said orders therein complained of, be affirmed with 250 *l.* costs.

* Rol. 394, l. 2.

† Recov. 85, see the passage ante, p. 69, note. ‡ Recov.