these depositions in evidence, the defendants objected, and when the objection was overruled they carried the case by appeal to the Circuit Court.

The Circuit Court excluded the depositions, and if the action of that court was correct in this respect, there can be no doubt that its decree dismissing the libel was the necessary result of the case as it stood on the remaining testimony.

The depositions relied on by appellant were properly ruled out, for the reason that they were taken without notice to defendants, in another suit to which defendants were not parties, and in which they had no right or opportunity to cross-examine the witnesses. Nor were defendants in any manner privies to either party in the former suit, in which the depositions had been taken. This alone, it is well settled, is a sufficient reason for their exclusion.

But when, to this consideration, it is added, that no reason is shown why the witnesses were not introduced in person, it is quite clear that the Circuit Court was right in rejecting the depositions.

The decree of the Circuit Court dismissing the libel is, therefore,

AFFIRMED.

EVANS v. PATTERSON.

1. The court reproves the practice of making bills of exception a sort of abstract or index to the history of the case, and so of obscuring its merits.
2. Where a party claiming land as owner, under the laws of Pennsylvania, brings ejectment in the name of the original warrantee, and recovers, against a father; and subsequently producing a deed-poll from the warrantee, made previously to the date of the ejectment and deraigning title to himself, brings another ejectment in his own name against a son, who on his father's death kept possession of the same land: such two suits are an estoppel and within the act of Assembly of Pennsylvania, of the 13th of April, 1807, which declares that "where two verdicts shall, in any suit of ejectment between the same parties, be given in succession, for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought."

Statement of the case.

3. But where a plaintiff deraigns title regularly from the warrantee, and the defendant shows no title, the question of estoppel is of no importance.

ERROR to the Circuit Court for the Western District of Pennsylvania; the case being thus:

The State of Pennsylvania in 1792 granted a warrant to survey a certain tract of land to William Barker. Barker, the warrantee, conveyed his interests to Daniel Broadhead. Broadhead died, and James Patterson bought his title from his heirs. But he had not, or at least could not find or prove the existence of any "deed-poll" from Barker, conveying the warrant to Broadhead. However, using the name of *Barker*, the warrantee, he brought ejectment in 1831 against a certain Eli Evans and some other persons who were in possession of the land. Evans and these others set up in defence that Barker did not appear, and that his existence was uncertain, and that Patterson, asserting himself as he did, to be owner of the land, could not bring suit in Barker's name. But the court decided that under the peculiar system of land law of Pennsylvania, he could; and he had verdict and judgment accordingly. On error to the Supreme Court of the State (*Ross* v. *Baker*, 5 Watts, 391), that tribunal affirmed the judgment; holding to the doctrine previously declared in *Campbell* v. *Galbraith*,* that in Pennsylvania a beneficial owner was entitled to use the name of a warrantee, though such warrantee was ignorant both of the action and the trust.

For some reason, however, Patterson did not get possession of the land. Eli Evans, against whom the ejectment had been brought, died, leaving a son, Elihu Evans, upon the land. Patterson, who had in the meantime found a deed-poll from Barker, the warrantee, to Broadhead, brought, A. D. 1855, a suit against this Elihu Evans; deraigning the title regularly from the warrantee to himself, and obtaining verdict and judgment. But still he did not get into actual or permanent possession. Elihu Evans yet maintained occupation.

* 1 Watts, 78.

Argument for the plaintiff in error.

Patterson, who was a citizen of Ohio, now brought a third ejectment—the suit below—in his own name against the said Elihu. This was in the Circuit Court for the Western District of Pennsylvania. He put in evidence the records of the two judgments just mentioned, proved his actual ownership at the time when the first suit (that in the name of William Barker), was brought, showed the identity of the land, now demanded with that recovered in the former suits, and that Elihu Evans was a son of Eli Evans, and in possession. He here rested; asserting that he had shown two recoveries for the same land; and claiming the benefit of them under a statute of Pennsylvania, passed 13th April, 1807, which enacts that "where two verdicts shall in any suit in ejectment between *the same parties* be given in succession for the plaintiff or defendant, and judgment be rendered thereon, no new ejectment shall be brought."

The defendant contended that the first ejectment having been instituted in the name of William Barker, the warrantee, after he had conveyed all his right and title to the land in controversy to Daniel Broadhead, as appeared from the evidence, there was no privity, and therefore the first verdict and judgment should not be counted against him, and prayed the court so to instruct the jury, which the court after argument of counsel declined to do, and charged the jury that if the evidence in the case was believed by them, the plaintiff had two verdicts and judgments for the land in controversy, which were conclusive in favor of his title, and he was entitled to recover.

The case was now here on error; the record showing a long and confused bill of exceptions, with recitals of all the deeds, and minute descriptions of the land and of the tracts bounding it.

Mr. Wilson, for the plaintiff in error:

This record raises two points for consideration:

1st. Whether the estoppel, under the Ejectment Act of Pennsylvania, arising from two verdicts and judgments between the same parties, or their privies, upon the same title,

Argument for the plaintiff in error.

applies to Elihu Evans, the defendant in the second ejectment, who was not a party to the first ejectment, and who was not proved to be privy to the same.

2d. Whether there was, at the time of the first ejectment, in the name of William Barker, in 1831, any privity between James Patterson, plaintiff in the second ejectment, and William Barker, the former plaintiff, since, in the second ejectment, it appeared that William Barker, the warrantee of the land, had, by deed-poll, in 1792, conveyed all his interest in the warrant to Daniel Broadhead, under whom Patterson, plaintiff, claimed title in the second ejectment.

It is not intended, under this second head, to controvert the settled doctrine in Pennsylvania, that so long as the relation of *trustee* and *cestui que trust* subsists between the warrantee and the real owner of the warrant, an ejectment may be maintained in the name of the warrantee, as nominal plaintiff, for the benefit of a real owner of the warrant; but the distinction is taken here, that any fiduciary relation between Barker, warrantee, and Broadhead, alleged owner of the warrant, had ceased as early as 1792, when the former conveyed his title to the latter, and, consequently, no privity between Patterson, claiming under Broadhead, could have existed in 1831.

It will not be denied that the decisions in the Pennsylvania courts, on the statute, have held,

1st. That the ejectment must have been for the same land.

2d. That in the trial the same title should have been passed upon.

3d. That the parties should be the same, or should stand in privity with those who were.

"It is certainly not enough that the former ejectment was upon the same land, on the same title, and under same deed, under which parties at present claim; it is necessary, besides, that the *parties be the same*, or *stand in privity* with those who were."*

Now, the first ejectment, or No. 1, and judgment on ver-

* Timbers *v.* Katz, 6 Watts & Sergeant, 290; Treaster *v.* Fleisher, 7 Id. 137.

dict, is not identical in name as to either plaintiff or defendant with the second ejectment, or No. 2; for in one, William Barker is plaintiff, and in the other, James Patterson.

The only identity or assumed privity, then, of James Patterson and William Barker is, that in *both* cases the warrant of William Barker, dated 3d April, 1792, was adduced in evidence, on the part of the plaintiff below, by which, in one case, No. 1, and *through* which, in the other, No. 2, recovery was asserted and had; in the former, in name of William Barker, the warrantee, as implying a legal title; in the latter, of Patterson, plaintiff, deducing title from Barker by regular mesne conveyance. The first suit, *Barker* v. *Ross*, as it went to the Supreme Court of Pennsylvania, was decided upon the presumption of the existence of William Barker, the warrantee and alleged trustee, without the evidence being given, as it was below in the present suit, that Barker had conveyed all his title and claim to Broadhead in 1792.

This brings us to the consideration of the second point.

The general doctrine in Pennsylvania is peculiar to her system of land adjudications, that ejectment at law may be instituted on either equitable or legal titles. That warrants and surveys are to be deemed as against all *but the Commonwealth*, in the same light as legal estates in the English common law, and the same consequences follow from any conveyance, devise, or assignment made by the warrantee or grantee.*

It follows, then, that a conveyance by deed-poll of a warrantee carries with it all legal or equitable rights—they pass to the grantee or assignee—his relation of legal owner, or trustee of any beneficial owner, cease. Until transfer under the warrant, he attaches to himself a *constructive* legal seizin of the land, with the same advantages as if in the actual possession at common law, to be defeated by disseizin in fact, or by some adverse claim or right.† Afterwards, his grantee or alienee is clothed with the attributes of an owner, and

* Caines *v.* Grant, 5 Binney, 120; Maclay *v.* Work, Id. 158.

† Strimpfler *v.* Roberts, 18 Pennsylvania State, 300.

takes the title, subject only to the consequences of his predecessor's acts during his seizin.* The assignee or alienee can then only maintain suit in his own name.

Applying these principles, the distinctions obviously arising in the case now here on error, and that of *Barker* v. *Ross* as it went to the Supreme Court of Pennsylvania, are appreciable. Chief Justice Gibson, delivering the opinion, says:

"The point raised (the non-existence of William Barker) is disposed of by the decision in *Campbell* v. *Galbraith*, 1 Watts, 78, that the *beneficial* owner may maintain ejectment in the name of a nominal warrantee, ignorant both of the action and the trust, no more being required than to disclose the name of the *actual* party."

In the trial below, in that case, no mesne conveyances whatever were shown from Barker to Broadhead, or to Patterson; no transfer or sale came in evidence. The simple warrant and survey were introduced, Patterson claiming, outside the record, as beneficial owner, without title, legal or equitable. The evidence now discloses the fact, that at the impetration of the writ in the first suit, A.D. 1831, Barker, as a personal owner *in fact*, and not as a *nominal* and *fictitious* trustee, had already by deed-poll, the 12th April, 1792, conveyed the land to Broadhead in fee.

On these facts, thus disclosed, the authority of *Campbell* v. *Galbraith*, cited by Gibson, C. J., is not applicable.

Mr. Patterson, contra, submitted the case.

Mr. Justice GRIER delivered the opinion of the court.

The bill of exceptions (so called) in this case, is a sort of abstract or index to the history of a case tried in the Western District of Pennsylvania. Protesting against attempts at mystifying the merits of a case by such records, we shall proceed to notice the single error which it is supposed that the court has committed in the charge to the jury.

* Blackmore *v.* Gregg, 10 Watts, 225.

Opinion of the court.

The case cannot be made intelligible without a brief notice of the very peculiar land law of Pennsylvania. The proprietors of the province, in the beginning, allowed no one man to locate and survey more than three hundred acres. To evade this rule in after times, it was the custom for speculators in land to make application in the names of third persons, and having obtained a warrant to take from them what was called a "deed-poll," or brief conveyance of their inchoate equitable claim.

Pennsylvania, until of late years, had no courts of equity. Hence, in an action of ejectment, the plaintiff might recover without showing a legal title. If he had a prior inchoate or equitable title, either as trustee or *cestui que trust*, he might recover. The courts treated the applicant, or warrantee, as trustee for the party who paid the purchase-money, or paid even the surveying fees; for the purchase-money, under the location or application system, was not paid at the time, and sometimes never. When the State succeeded to the title of the proprietors, the application system was abandoned, and warrants were granted on payment of the purchase-money for the number of acres for which his warrant called. Hence, where the claimant of the warrant was unable to show his deed-poll, he might recover by showing that he paid the purchase-money; that the warrantee, whose name was used, was therefore trustee for him. And an ejectment might also be maintained in the name of the warrantee, although he had no beneficial interest in the land, and had no knowledge of the institution of the suit. See *Campbell* v. *Galbraith*,* and also *Ross* v. *Barker*,† which was decided on the title now in question.

To come to the history of the present case. Daniel Broadhead was the owner of the warrant in the name of William Barker. He had died intestate. The defendant in error had bought up the titles of the different heirs, and found Eli Evans, the father of the plaintiff in error, and others in possession, claiming title as settlers. But as the *deed-poll* from

* 1 Watts, 78.

† 5 Id. 391.

Barker to Broadhead could not be found, the defendant in error brought his first ejectment in the name of the warrantee, and recovered. The objection was made that Patterson, the defendant in error, could not maintain his suit in such form. But the Supreme Court, in the cases above cited, determined that he could.

Afterwards, finding the same parties or their privies in possession (A. D. 1855), he brought another ejectment in his own name, and having found the lost deed-poll to Broadhead, he was able to deraign his title regularly from the original warrantee, and had another verdict and judgment in his favor.

In the case now before us, Elihu Evans, the plaintiff in error, had succeeded to the claim of his father, Eli Evans. On the trial, the defendant in error had again deraigned his title from Barker, the warrantee, and gave in evidence also his two former recoveries. As he had already shown a title regularly deraigned from the original warrantee, and the defendant Evans had shown no title at all, the two former verdicts were unnecessary, but were conclusive, according to the laws of Pennsylvania, between the same parties and their privies.

The only objection made by Evans was, to the conclusiveness of the two verdicts, because the first suit was in the name of Barker, and, as now appeared by the deed to Broadhead, that Barker had no title. When the recovery was had in his name, it was argued that such "verdict and judgment should not be counted." The record showed that at the time the first ejectment was brought, Patterson had bought up the title from Broadhead's heirs; that the suit was carried on by him in the name of the warrantee for his own use. No objection was made to the admission of the first verdict and judgment, because the parties defendant were not the same, or for want of privity between the defendant and the parties defendant in the former action. But it was contended that the first verdict and judgment "should not be counted against him" for want of privity between the plaintiffs. There was satisfactory evidence that Patterson

was the real party in interest, and conducted both suits, and had recovered, in the first suit, in the name of a trustee, and in the second, in his own name, as "*cestui que trust*" of the equitable estate—as where one suit was in a real or fictitious lease from John Doe, and the other in the name of Richard Roe. The jury were instructed that if they believed the evidence that Patterson was the real party in both suits, the two verdicts and judgments were conclusive.

But the plaintiff below having deraigned title from the warrantee, and the plaintiff in error having shown no title, the question as to the estoppel was of no importance, as the court were bound to instruct the jury, that without its aid their verdict should be the same.

The plaintiff in error, having failed to show any error in the record, the

JUDGMENT IS AFFIRMED.

HUGHES *v.* UNITED STATES

1. The equity of a preëmption claimant of land under the laws of the United States who has complied with the conditions imposed by those laws, obtained his certificate by the payment of the purchase-money, and retained uninterrupted possession of the property, cannot be defeated by one whose entry was subsequent, although he has fortified his title with a patent; such person having notice sufficient to put him on inquiry as to the interests, legal or equitable, of the preëmption claimant.
2. A decree dismissing a bill for matters not involving merits is no bar to a subsequent suit.
3. A court of equity will set aside a patent of the United States obtained by mistake or inadvertence of the officers of the land office, on a bill filed for that purpose by the government when the patent *primâ facie* passes the title.
4. Open, notorious, and exclusive possession of real property by parties claiming it is sufficient to put other persons upon inquiry as to the interests, legal or equitable, held by such parties; and if such other persons neglect to make the inquiry, they are not entitled to any greater consideration than if they had made it and had ascertained the actual facts of the case.

APPEAL from the Circuit Court of the United States for the Eastern District of Louisiana.