ises to any purpose which would render valueless the adjoining real estate of the complainant.

Considered in any point of view, our conclusion is, that the decree of the State court was correct; and the decision in this case also disposes of the appeal brought here by the same appellants, from a decree rendered by the Circuit Court of the United States for the District of Minnesota, in favor of George D. Humphreys and others, which was a bill in equity against the same respondent corporation. The appeal in that case depends substantially upon the same facts, and must be disposed of in the same way. Both decrees are

AFFIRMED.

MEAD v. BALLARD.

1. A grant of land, "said land being conveyed *upon the express understanding and condition*" that a certain institute of learning then incorporated "shall be *permanently located* upon said lands," between the date of the deed and the same day in the succeeding year, is a grant upon condition, a condition subsequent.
2. Such permanent location was made and the condition was thus fulfilled when the trustees passed a resolution locating the building on the land, with the intention that it should be the permanent place of conducting the business of the corporation. And this, notwithstanding that the building erected in pursuance of the resolution was afterwards destroyed by fire, and the institute subsequently erected on another piece of land.

ERROR to the Circuit Court for Wisconsin.

Mead brought ejectment in the court below against Ballard to recover certain land which the ancestor of him (Mead) had conveyed for a full consideration, on the 7th September, 1847, to Amos Lawrence, of Boston, in fee. The deed contained the usual covenants of warranty, and also a clause expressed in these words:

"Said land being conveyed upon the express understanding and *condition* that the Lawrence Institute of Wisconsin, chartered by the legislature of said Territory, *shall be permanently*

located upon said lands, and *on failure of such location being made on or before the 7th day of September*, 1848, and on repayment of the purchase-money without interest, the said land shall revert to and become the property of said grantors."

On the 9th of August, 1848, the board of trustees of the Lawrence Institute passed a resolution locating the Institute on the land described in the deed. Contracts were made for the necessary buildings, which were commenced immediately, and they were finished and the institution in full operation by November, 1849. These buildings cost about $8000, but were burned down in the year 1857, *and never rebuilt.* It was also said that in 1853, a larger building, called the University, was erected on an *adjoining* tract.

In 1851, Lawrence sold to one Wright part of the tract which had been conveyed, as above stated, to him; and in 1853 Wright sold it to Ballard. Mead now, in 1865, being sole heir of the original grantor, and alleging that the facts constituted an infraction of the condition on which the land had been conveyed, made a tender, through an agent, to Lawrence, of the amount originally paid by Lawrence for the tract—depositing the money in Boston "where he could get it at any time he chooses"—and brought this ejectment.

The jury, under charge of the court, that if the Institute was located on the tract on or before the 7th of September, 1848, and if the directors then proceeded to erect a building which was used by it in its business, the plaintiff could not claim a forfeiture, found for the defendant; and the case was brought here on exceptions by the plaintiff.

Mr. Palmer, for the plaintiff in error:

1. The conveyance made by Mead to Lawrence, was made upon a *condition*, a condition subsequent. As a consequence, the estate in the lands described therein, vested in Lawrence, on the execution and delivery of the deed, September 7, 1847, subject, however, to be defeated by the failure or neglect of the grantee to perform the conditions.

2. The estate was so defeated. There is no reason to

doubt that the grantor (Mead) intended by the language of his deed—"*permanently* located"—to secure a fixed and continued location of the principal buildings of the Institute upon the lands conveyed. Nor could he have chosen words more apt to express his purpose.

The word "permanent" is derived from the Latin *per*, an expression which in composition is an intensitive, and here means thoroughly, or completely; and the Latin *manens*, whose signification is "remaining," or "lasting." Permanent means, therefore, and is so defined by Noah Webster, "continuing in the same state without any change that destroys the form or nature of the thing," . . "with long continuance, durably, in a fixed state or place." And permanently *locating* a building, means, both etymologically and within the plain meaning of this deed,—not choosing a spot for a building—such choice is implied in the acceptance of the lot—but permanently *placing* the building on that spot. Of what value to a founder's pride would it be to select the place and then abandon it? Such a location would be what the law calls "illusory;" a mockery, and nothing else. The grantor associated his real estate, a symbol of perpetuity, with himself, and meant to identify *his estate* with a seat of learning, though it bore not his name. The trustees accept, in form, from him, that real estate, his gift, subject to an express condition; and when the gift is well passed to them, they pitch away the condition and retain the gift simply. If there is a condition in the case at all, it cannot be disposed of in this way.

The University was not permanently located; a temporary structure was erected in 1848, which was burned in 1857. The main building, or University proper, was commenced in 1853, on another tract. Such an abandonment of the premises conveyed as a site for the University, and a "permanent" location of it upon the new tract, was a violation of this condition of the deed with respect to the permanency of the location.

3. The condition contained in the deed having been violated, the contingency arose in which the land conveyed

"reverted to and became the property of the grantor, on repayment of the purchase-money." The plaintiff, sole heir at law of the grantor, caused the purchase-money to be tendered to Lawrence, and in a few months afterwards brought this action.

Mr. G. W. Lakin, contra:

1. The words hardly make a *condition*. The language of the deed being dictated by the grantor must be taken strictly against him, especially when the language is set up to destroy an estate granted. The technical language of a condition is, "provided, however, that this conveyance is upon the condition," &c. But—

2. The condition in the deed was and has been performed and fulfilled. The thing to be done was to locate the Lawrence Institute on the tract of land, on or before the 7th day of September, 1848. The word "locate" is peculiarly an American word. On the meaning of any such word, Noah Webster is the highest authority. Now, to locate, is defined by him, "to designate or determine the place of." It does not mean to erect and forever keep erected; which is its meaning as assumed by opposing counsel. The board of trustees did designate and determine the place of the Lawrence Institute. The purchaser could not be held to look beyond the fact of an actual location; certainly not beyond the fact of an actual erection of the Institute. He was not bound to look through all coming time to ascertain if the elements, legislation, or some convulsion of nature should extinguish and destroy it. The destruction of the main building in 1857, by fire, therefore, and its subsequent erection on the tract adjoining, could not work a forfeiture of the condition, or a reversion of the title to the plaintiff. At any rate, such an event could not affect the title of the defendant, who had purchased in good faith, and who had improved and occupied years before the event happened.

Mr. Justice MILLER delivered the opinion of the court.

The plaintiff, who sues as heir-at-law of the grantors, main-

tains that the condition contained in the deed from Mead to Lawrence, is a condition subsequent which has not been performed, and having tendered the money received by them, he now claims the right to recover the land.

It must be conceded that the language of the deed amounts to a condition subsequent, and as no point was made in the trial as to the sufficiency of the tender, the only question before us is whether the condition was performed.

That condition was, that a permanent location of the Institute on the land should be made between the date of the deed and the same day of the succeeding year. The location, then, whatever may have been its character, was something which could have been done and completed within one year. If it was done within that time the plaintiff's right of reverter was gone. If it was not done within the year, he could refund the money and recover the land. His right, on whatever it depended, must have been complete on the 7th day of September, 1848, for within that time the condition was to be performed.

The thing to be done was the location of the Institute. Did this mean that all the buildings which the institution might ever need were to be built within that time, or did it mean that the officers of the institution were to determine, in good faith, the place where the buildings for its use should be erected? It is clear to us that the latter was the real meaning of the parties, and that when the trustees passed their resolution locating the building on the land, with the intention that it should be the permanent place of conducting the business of the corporation, they had permanently located the Institute within the true construction of the contract.

Counsel for the plaintiff attach to the word "permanent," in this connection, a meaning inconsistent with the obvious intent of the parties, that the condition was one which might be fully performed within a year. Such a construction is something more than a condition to locate. It is a covenant to build and rebuild; a covenant against removal at any time; a covenant to keep up an institution of learning on that land

Statement of the case.

forever, or for a very indefinite time. This could not have been the intention of the parties.

We are of opinion that the testimony shows, in any view that can be taken of it, that the condition was fully complied with and performed, and with it passed all right of reversion to the grantor or his heirs.

The rulings of the Circuit Court to which exceptions were taken were in conformity to these views, and its

JUDGMENT IS AFFIRMED.

JACOBS *v.* BAKER.

1. *Semble* that an improvement in the plan of constructing a jail, is not a subject of patent within the Patent Acts of 1836 or 1842.
2. Jacobs was not the first inventor of the improvements patented to him in 1859 and 1860, for improvements in the construction of jails.

JACOBS filed a bill in the Circuit Court for Southern Ohio against Baker, seeking relief for the infringement of four separate patents, which had been granted to him, Jacobs, *for improvements in the construction of prisons.* The bill set forth the different patents.

The first, dated January 7th, 1859, was for an improvement in the construction of prisons, which the complainant set forth in his specification with very numerous plates and designs. The claim concluded thus: "What I claim as my invention, and desire to secure by letters patent, is a secret passage, or guard-chamber, around the outside of an iron-plate jail, and between said jail and a surrounding inclosure, constructed and arranged, substantially as described, for the purpose set forth." [The purpose was to allow the keeper to oversee and overhear the prisoners, without their being conscious of his presence.]

The next patent was dated 20th December, 1859, and purported to be for an "improvement in iron-plate jails." The claim was for "the improved iron walls for the same, con-