

*With exhibits of
J. Livingston*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW-YORK,

ag't.

HERMAN LIVINGSTON.

EJECTMENT FOR 150 ACRES OF WOOD LAND,

PART OF THE

MANOR OF LIVINGSTON.

POINTS AND ARGUMENT

OF .

JOSIAH SUTHERLAND, ESQ.

*One of the Counsel for Defendant, upon the law and evidence establishing
the Title to said Manor, at Albany. before the Hon. William
B. Wright, on the 27th of May, 1850..*

HUDSON :

P. DEAN CARRIQUE'S PRINT, HUDSON GAZETTE OFFICE.

1850.



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This cause was tried at the Circuit Court held in Columbia County, before the Hon. WILLIAM B. WRIGHT, in April, 1850. Jury withdrawn under stipulation of parties, submitting the case on the Law and the Facts to the Judge, and to be re-argued before him at Albany, on the 27th May, 1850. The cause was then re-argued by JOHN VAN BUREN, Esq. as Counsel for the People, and J. SUTHERLAND, Esq. as Counsel for Defendant.

Mr. Sutherland after stating the Record, Parchment and Paper Title introduced by the Defendant on the trial of this cause, and the other evidence illustrating that Title, and having referred to or read the numerous Acts of the Colonial government, of its Legislature, &c. and also of this State, recognizing that Title, and the possession and acts of ownership, and claim of Title under it, proceeded to state the points taken by him for the defendant, as follows—

FIRST:

We say that the defendant has shewn a good and perfect Title to the premises in question, under the Patents of 1686 and 1715 and under each of those Patents, and this we shall prove by several distinct points or propositions.

I. Whether the English Crown claimed or had title to this Province, by conquest from the Dutch, or by discovery; in either case, by the theory of the English Constitution, the vacant and unappropriated lands belonged to the Crown. All the titles to lands in the province of New York, prior to the revolution, originated from the Crown; either *mediately* from the Duke of York before his accession to the throne, or *immediately* by grant under the great seal of England or of the Province, (Gov. Tryon's Report, I vol. Doc. Hist. of N. York, 749, 750.)

The mode or form of these grants was by patent by the Governor of the Duke of York under his seal, or after his accession to the throne, by the Governors under the great seal of the Province, (I Doc. Hist. N. York, 750.) All the titles to lands in the State of New York, have been acquired either by patents under the great seal of the Province, or of the Governor of the Duke of York, or by patents under the great seal of New York, or under the different statutes of limitations, except perhaps a few Dutch grants which may never have been confirmed.

The Courts will recognise no other sources of title.

Jackson vs. Ingraham, 4 John R. 181,
Jackson vs. Waters, 12 John R. 365,
La Fambois vs. Jackson, 8 Cowen, 604.

A grant or patent is not void because Indian title has not been extinguished,

Jackson vs. Hudson, 3 John. R. 383,
6 Cranch 87, Fletcher vs. Peck.

And if the Indian possession or title were regarded as a source of title, the plaintiffs in this case have not shewn it extinguished, or conveyed to them.

In the Colony the Indian possession was not considered as a source of title. (See Gov. Tryon's Rep. I. vol. Doc. Hist. N. York, 751.)

In Jackson vs. Hudson, Kent, C. J. says, "the question of the Indian possession and title is, or was, a political question between the government and them."

II. The patents of 1686 and of 1715 introduced in evidence by the defendant and under which he claims title, are regular on their face, unexceptionable in point of form, and purport to have been issued, sealed and recorded in accordance with law and the usages and customs of the Colony.

III. A patent is a title from its date, and conclusive against all those whose rights did not commence previous to its emanation. (Hoofnagle and others vs. Anderson, 7th Wheaton, 212.)

A Patent can only be impeached for causes anterior to its being issued in a court of Equity.

Patterson vs. Winn 11 Wheaton 380
Polks lessee vs. Wendell & others 9 Cranch 87 to 102.

* It cannot be attacked collaterally for any defect not appearing on its face, not even for fraud.

Jackson vs. Lawton, 10 John. 23
 People vs. Mauran, 5 Denio 398, 9 &c.
 Boardman vs. Reed, 6 Peters 342, 3, 332
 Bagnell vs. Broderick 13, do 450.
 Jackson vs. Marsh 6 Cowen 281,
 12 John. 81, 2. 3 U. S. Cond. Rep. 291.

The Arredondo case, 6 Peters 727, &c. shows that this applies to Colonial grants or patents.

In the case of Blescoes devisees vs. Wells 4 Bibb 329 it is said "A patent cannot be avoided for matter de-hors the grant; the commonwealth cannot be divested of her title except by record, and she cannot be re-invested except by matter of record."

The case in 5th Denio shews, that it would make no difference whether the evidence was offered or produced by plff. or deft—in that case the court say, "The fact therefore that the evidence was before the Court and was produced by the *defendants themselves*, did in no respect alter the rule (pa. 400.)

It follows therefore in this case, that none of the previous patents; nor any other evidence; although produced by deft. himself, could be used in this suit to impeach or invalidate the patent of 1715. And it also follows, that all the evidence on the trial in this case produced by the People for the purpose of invalidating the patents, and received subject to objection, is inadmissible and must be excluded by the Court.

IV. The authority of the Governor or officer to make the grant or patent *is to be presumed*.—In the Arredondo, Case 6, Peters 728, it is said, "Its actual exercise without any evidence of disavowal, revocation or denial by the King, and his consequent acquiescence and presumed ratification, are sufficient proof in the absence of any to the contrary (subsequent to the grant) of the royal assent to the exercise of his prerogative, by his local Governors. This, nor no other Court can require proof that there exists in every government a power to dispose of its property. In the absence of any elsewhere, we are bound to presume and consider that it exists in the officer or tribunal who exercises it, by making grants, and that it is fully evidenced by occupation, enjoyment and transfer of property, without any disturb.

ance by any superior power, and respected by all co-ordinate and superior officers and tribunals, by the State, Colony or Province where it lies."

See also Patterson vs. Winne, 5 Peters, 241.
The People vs. Mauran, 5 Denio, 398.

"The grants of Colonial Governors before the Revolution, have always been, and yet are taken as plenary evidence of the grant itself, as well as authority to dispose of the public lands." See Arredondo case above cited.

In this case the People have themselves shown the authority of Governors Dongan and Hunter to issue the patents, by introducing in evidence certain royal commissions; but had not this been done, the authorities show that the Court would have been bound to presume such authority; or if the authority shown by them is not full, to presume other commissions or instructions, particularly after a long possession, acts of ownership and claim of title.

V. The Governors Dongan and Hunter, having had power and jurisdiction of the subject matter, and having actually issued the patents; they are not only to be presumed to have been regularly issued, but the patents themselves are *conclusive* as to all questions of *regularity*.

Arredondo Case, 6 Peters, 729.

1, Cranch, 170, 171. People vs. Mauran, 5 Denio, 398-9, &c.

4, Wheaton, 423. 9 Cranch, 99. 5 Wheaton, 304.

2 Peters, 412. 7 Wheaton, 217, 218.

4 do 563. 12 do 528.

11 Mass. 227.

11 S. & R., 424. Williams vs. Shedon and others, 10 Wend., 654.

20 John, 739.

2 Dow P. Cas. 521.

VI. From the undisputed, uninterrupted possession, claim of title, acts of ownership and exercise of the franchise rights granted by the patents, by the first Robert Livingston in his life time, and by his descendants since his death, (except so far as the title and possession of Robert Livingston, jr., was in his life time disputed by Massachusetts Bay, and the owners of adjoining patents,) with the knowledge and acquiescence of the Colonial Government and its officers before the Revolution, and of the State of New York and its officers since the Revolution; this Court would be bound to *presume* a grant in the absence of one.

Possession is presumed to be rightful. A long, quiet, peaceable possession and acts of ownership under claim of title, will authorize the presumption of a grant, and certainly of every requisite formality; everything will be presumed to have been done rightfully, not wrongfully or fraudulently. These presumptions are often raised, not because the Court believe that any deed or grant ever existed, but for the sake of quieting possession. In the case of the *Mayor of Hull vs. Horner*, (Cowper 102,) a grant from the Crown was presumed. Lord Mansfield said in this case,—“The principle is a good one, namely in favor of rights which parties have long been in the peaceable and quiet possession of.” See also,

Goodlittle vs. Duke of Candos, 2 Barrows, 1065, 1072, 1073.
Eldridge vs. Knott, Cowper 214, *idem.* 201.

In *Jackson vs. McCall*, 10 John 377, 380, the Court held that both a patent from the Colonial government, and a deed from the patentee might have been presumed for the sake of quieting the possession; there was an order of the Council of the Colony of New York, 1764, for the survey of the lot, and a survey was made, but no patent could be found of record.

In *Jackson ex. dem. Gansevort vs. Lunn*, 3 John, Cases 109, on the same principle of quieting possession, a deed was presumed from the original patentees to the ancestors of the lessors of the plaintiff.

In Massachusetts it has been held that a corporation will be presumed. 7 Mass. R. 547.

In Maryland it has been adjudged when corporate powers have been exercised for a length of time, with the *knowledge* of the government, a grant will be presumed.

5 Harris & Johnson, 122.

In ancient patents where the description of the land is vague and somewhat doubtful, the acts of the parties—the acts of the Government, and those claiming under adjoining patents, are entitled to great weight in the location of the grant.

Jackson vs. Wood, 13 John, R. 346.

In this case Mr. Justice Thompson says,—“But in grants of such antiquity, (*Rumbout & Philips’* patents, which adjoined and the lines of which were in question in this suit,) where the description of the land is vague, and the construction somewhat doubtful, the acts of the

parties, the acts of the Government, and of those claiming under adjoining patents, are entitled to great weight in the location of the grant."

It was held in this case that after the acquiescence of the proprietors of the Philips' patent in the location of the south line of the Rombout patent, and the length of time that had elapsed since such location, it was too late to call such location in question.

It was also decided, "that the various acts of the legislature, from 1737 to the present day, dividing the part of the county (of Dutchess) into precincts and towns, in which the line as now set up, on the part of the plaintiff, has been recognized as the true line between the patents—is a strong corroboration of this construction."

The same principle is decided in *Jackson vs. Vedder*, 2 Caines Rep. 210 and in *Canal appraisers vs. the people*, 17 Wend. 604, opinion of Senator Beardsley 604, and opinion of the Chancellor 581.

By the common law great importance is given to usage in the construction of patents.

An ancient charter shall be construed according to the import of the words when the charter was made, and subsequent usage.

2 Inst. 282. 9 Co. 28.

In 2 Inst. 282, it is said:—"Optimus interpres rerum usus" is an old rule and the best expounder of a claim by old and obscure words.

Upon the same principle the acts done under the patents, subsequently ; evinced the knowledge and intent, with which they were granted, and would forbid the presumption of any fraud or false suggestions.

VII. Had the patents been issued without authority, the subsequent recognition and adoption by the Crown or the Colonial Government and State, is of the same force as if done by authority.

In the *Arredondo* case 6 Peters 713 the Court say : "It is a legislative ratification of an act done without previous authority, and this subsequent recognition and adoption is of the same force, as if done by a pre-existing power and relates back to the act done."

Had the patents been issued originally by mistake or fraud; a subsequent recognition or adoption by the Crown or by the Colonial Government subsequent to the discovery of such mistake or fraud, and with a full knowledge thereof, would have rendered the patents valid, and had the same force and effect as a new patent or grant of confirmation after such discovery. *We think even as between the Crown and those claiming under the patents, certainly as between all other persons.*

In this case and in this suit, *the question of the validity* of the patents, we have shewn by authority, is confined to the question of fraud or other defects appearing *on the face* of the patents: those patents are the same *now on their face*, as they were when issued. All the fraud that can be discovered *now on the face* of either of them, could have been and was discovered at the time and immediately after they were severally issued; no *new discovery* in this respect, has been since, or can be now made; not only therefore the acts of the Colonial Legislature and government, and of the State since the Revolution, recognizing the validity of the patents, such as the receipt and commutation of quit-rents, Legislative enactments, &c., cured such defect if any, *in all* the patents; but even the patents themselves, as they were severally issued in order of time, cured any such defect in those previously issued. Certainly the officers of the Colonial government, whose duty it was to see that patents were properly issued, and the Colonial Legislature, would be much more likely to make this discovery of a defect or fraud, than the people of the State of this day, or even their Attorney General; particularly when you take into account the *factions* into which the colony for many years and soon after these patents were issued, were divided; that Robert Livingston was at the head, of one of these factions, and as such head had many bitter and powerful enemies, had his property confiscated, which was afterwards restored by act of Parliament. (See doc. Hist, of N. York and Smith's Hist. of N. York.)

It will not be contended, we presume, that however nugatory and void such subsequent confirmation and recognition of a fraudulent patent would have been as against the crown, if such confirmation or recognition was made or done ignorantly of the fraud; yet if such confirmation or recognition, took place with full knowledge of that fraud, that it would operate as a confirmation of the grant or patent, and cure the fraud even as against the crown—that such would have been the legal

effect in the latter case, is clearly within the principle decided in many cases above cited, and certainly consistent with reason, common sense and the principles of Justice.

VIII. The patent of 1686 (which covers the same ground as the patent of 1715) is expressly confirmed by the act of 1691 confirming patents. By the first enacting clause, "All charters, patents, grants, made, given and granted, and well and truly executed under the seal of this Province, are and shall forever be deemed, esteemed and reputed good and effectual charters, patents, grants, authentic in the law against their Majesties, their heirs and successors forever, *notwithstanding* of the want of forms in the law, or of the non-feasance of any right, &c., which ought to have been done, &c." The second clause of the act, ratifies and confirms forever all patents, &c., without the addition of the "*Notwithstanding*" part of the first clause, and then follows a proviso, saving the just right or pretences of any person or persons to any house, tract or parcel of land within the Province, provided such person or persons make his or their claim within five years after the date of the act.

The words "constituted and authorized" in the first clause, evidently refers to the word "Seal" and not the words "Charters, Patents, &c."

The patent of 1686 comes directly within both enacting clauses of the act, and within the purpose and intent as stated in the preamble. It is executed under the constituted and authorised seal of the Province—it was registered in the Secretary's office.

But it is said by the counsel for the People, that it was intended to confirm only such patents as were bad in point of form, &c., because it confirms them notwithstanding the want of form, &c. Now if there is any thing in this reasoning, it leads to this absurd result, to-wit: that the act was intended to confirm patents bad in point of form, and not those good in point of form. Now I suppose it was under this construction of the Statute, that the counsel advised the late Attorney General, eminent lawyer as he is, to bring this suit; and that the late Attorney General under his oath of office, and the responsibility imposed upon him by the resolution of the legislature, did in fact bring this suit; and that the present Attorney General made his report to the Legislature, recommending the passage of a law *stopping* the collection of rents, &c., without a saving clause in favor of this title through the

patent of 1686 : because it is clear that if this patent of 1686 was confirmed by the act of 1691, then there is an end of this suit and an end to all questions with regard to the goodness of the title to the Manor of Livingston—then the State never had title, it has none now—the title is in the defendant and others claiming under the patent of 1686.

This statute was intended to be and was a confirmation as against the crown *from its date*, and as against *all other persons after five years from its date*.

As explanatory of the Statute of 1691, and also as a distinct confirmation or evidence of title, we refer also to the statute passed 30th Oct. 1710, entitled, “An act for the better settlement and assurance of land in this Colony,” which will be found, together with the act of 1691, in the appendix to the first vol. of Jones & Varicks Laws of N. Y. pages 1, 2, 3. It appears from the preface to the same volume that they were so put in the appendix because they were in force after the Revolution.

It does not appear that these Statutes were ever repealed. They were in force on the 19th day of April 1775, and were therefore by the very terms of the 35th section of the first Constitution of this State, of 1777—(renewed in the Constitutions of 1821 and 1846,) made a part of the law of this State, and are so to this day.

We therefore make out title under the three several Constitutions of this state, by their plain, unequivocal and express provisions; and if the counsel on the other side, ask a better or a stronger title—a *title above the Constitution*, we must refer him to the “*Buffalo platform*,” to his speech and map as published in the New York Tribune and Albany Freeholder—particularly to the *black streak* along the river, and the *black spot* at Taghkanic—or to the late speech of the distinguished Senator from this State, Mr. Seward, now at Washington.

Even if the patent of 1686 was originally defective, the statute of 1691 made it good against the Crown—that statute and the statute of 1710 makes it good and valid against the people of this State and all other persons.

IX. The patent of 1715, is a distinct grant by itself, and not a mere *confirmation* of the patent of 1686. It grants the land by actual survey, courses and distances in miles and parts of a mile. It also grants

additional franchise rights, as well for the benefit of the tenants and inhabitants of the Manor, as of Robert Livingston,—such as the right of the freeholders of the Manor to meet and choose a Representative to the Colonial Assembly, who should be their Representative ; the right to choose Collectors and two Constables. These were franchises granted more for the benefit of the freeholders of the Manor, than for the benefit of Robert Livingston. (And it appears from the Journals of the Colonial Assembly, and in this case, from the testimony of Doct. O'Callagan, that the inhabitants of the Manor were represented in the Colonial Assembly under this grant from soon after 1715 to the Revolution, and it does not appear that the right to be so represented was ever contested.)

The 6000 acres which had been granted by Robert Livingston to Governor Hunter for the use of the Queen, is excepted out of this patent of 1715. How could it be excepted out of lands granted, if no lands were granted ? The exception itself implies a grant. (This exception is also evidence of the acceptance of Governor Hunter for use of the Queen, of the deed from Robert Livingston to him in 1710, and the execution of that deed by Robert Livingston with full covenants of warranty, &c.) Its acceptance by Governor Hunter for the Queen, for her use ; the subsequent use and appropriation by her of this 6000 acres, for the settlement of the Palatines, by whom, and by whose descendants it has been occupied from that day to this ; and the exception of the 6000 acres from this patent of 1715, are of themselves a recognition and confirmation of the patent of 1686, even by the Crown. This patent of 1715 states that the grant was made from “especial grace, certain knowledge and mere motion” on the part of the Crown. It is unnecessary to inquire in this suit, and between these parties, what would have been the legal effect and import of these words in the construction of the patent, in a suit between the Crown and Robert Livingston ; but is it not clear that, *in this suit* and as between these parties, not only these, but all other facts stated or recited in the patent, are to be taken as true ; and that the patent should receive a liberal construction in favor of the grantee against the Crown.

Now, we have shewn by the case of the People vs. Mauran, 5th Denio, and by the other cases cited above, that the plaintiffs cannot in this suit use the patent of 1686, or any other patent or evidence, *dehors* this patent of 1715, to attack it ; and as we do not understand the counsel for the People to contend here, that there is even color or pre-

tence for saying that the patent of 1715, *on its face alone*, without any other patent, fact, or evidnence, is void for fraud or other defect, it follows that this patent of 1715 is a complete defence in this suit, because it shows title out of the plaintiffs.

As to the objection, that it grants a Manor and is therefore void,—(without stopping to inquire at how early a day in England the creation of Manors ceased to be legal there ; or as to the construction and effect of the statue “ *Quia Emptores* ;” whether that statue would have made this patent void there, even as to the Manorial rights and franchises ;) two answers to this objection at once suggest themselves :

First.—Although void as a grant of a *Manor*, that would not make it void as a grant of land. It has been decided by the United States Court in many of the cases cited before, that if a State grant by patent a tract of land, part of which was within its territorial jurisdiction and part not, the patent is good for that portion within the limits of the State, and void as to that part beyond it.

Second.—If such was the law of England with regard to the grants of Manors, it was not the law of the Colony. All the Common Law of England never was considered as applying to the Colony ; only certain parts of it. This appears from the Constitution of this State. The acts of the Colonial Government and Legislature, and the statutes of the State recognize the existence and legality of Manors. Manors are expressly named in the Statute of Limitations of 1788, and of 1801.

It was the usage and custom of the Colony to grant Manors, and such usage and custom has all the force and binding power of express laws—they were the Common Law of the Colony.

See 6 Peters, Arredondo Case.

X. We come now to the only remaining point which we shall make, under the general head of *Record and Paper Title* ; and which we intend as an answer to that far-famed, widely-published, much talked of, wonderful argument and map of the counsel, Mr. Van Buren, made and used by him on the argument of the motion for a non-suit, at the late trial of this cause in Columbia County ; by which speech it would appear, that after a lapse of more than one hundred and fifty years, and the quiet and peaceable possession of Robert Livingston and his descendants during all that time, under these patents—after having passed the scrutiny of the Colonial Governors, of the

Patent Officers of the Crown, whose peculiar duty it was to look into and examine them; of the many bitter enemies of Robert Livingston, growing out of the political factions in the Colony, whose peculiar feelings would have prompted them to seize hold of the slightest cause of suspicion as to the validity, or *bona fides* of the patents; after having been examined and passed upon in reference to this very question of fraud by John Lawrence, Attorney General, and by the Legislature of this State in 1795; by Hildreth, Attorney General, De Witt, ~~by~~ Surveyor General, and the Legislature of this State in 1811; by Abraham Van Vechten as Attorney General for the People in 1813, and the distinguished father of the Counsel, as Counsel for *the People* and *Tenants then*, as the Counsel himself is counsel for the People and Tenants *now*, (the Tenants legal interest, be it remembered, being directly opposed to the Peoples';) and after these patents have been spread out upon the record in the Secretary's office, before the eyes of every Attorney General, and of all the officers, both of the Colony and of this State, for more than 150 years; and after, of the one hundred and sixty thousand acres covered by the patents, all have been sold and conveyed in fee but about twenty-five thousand acres, and the title must therefore have been examined by many eminent Lawyers, learned in the law, as counsel for the several grantees,—after all this, it has been left for the Counsel under the influence of his *double fee*, or of certain *peculiar doctrines* of the day, to make the prodigious and wonderful discovery that the patents of 1686 and 1715, are fraudulent and void; that Robert Livingston *cheated* the *Crown*. And this discovery has been published to the world, with the Counsel's *illustrative map*, with its black *streak* and *spot*, in the New York Tribune and Albany Freeholder,—those prominent commentators, advocates and publishers of the theoretic abstractions of the German and French Schools, relative to the rights of property.

Now, permitting the counsel to use (to make out his charge of fraud) *all* the patents and all other documents and evidence positive and negative introduced or offered, both by the People and by the Defendant in this case, what is his argument and reasoning to make good his charge? It is this:

- I. The patent of 1684 granted but 2000~~x~~ acres of flat or plain land along the river, (this is his black streak on his map,) and 1800 acres of wood land adjoining.

II. That the patent of 1685 granted only about 300 Morgan or 600 acres, being a certain tract of land called Taghkanic, which he from the description in the patent undertakes to locate (this is his black spot on the map,) and to show that his construction and location of this patent is correct, he refers to the journal of Robert Livingston—the map of Beatty—the will of Robert Livingston—to certain leases introduced by the defendant for lands at or to the north of Taghkanic.

III. That the 2000 acres on the river and 600 acres at Taghkanic, do not lie together, but 18 miles apart.

IV. That the patent of 1686 *is not* a grant, but a mere confirmation of the patents of 1684, 1685, reserving the same quit rent; that it recites that the Taghkanic tract and the river tract are adjacent; that the recital is false, and makes the patent of 1686 void.

V. That the patent of 1715 is a mere confirmation of the patent of 1686, not a grant; that it contains the false suggestion or recital, that it had been shewn to Dongan in 1686, by Robert Livingston, that he had purchased other lands of the Indians, besides the Taghkanic tract and the river tract; that this patent is therefore void as confirming a void patent, and for containing the false suggestion that he had purchased other lands, &c.

Now the court will see that the whole of this argument, lame and weak as it is, depends even for a colorable plausibility, upon the correctness of the counsel's construction and location of the patent of 1685; and if such construction and location of that patent is erroneous, his whole argument as to fraud in either, or all of the patents fails. We do not pretend, that at this day we can locate the patent of 1685 with any certainty, except by means of the other patents and by the acts of the parties. And instead of using these means at this distant day, as the most rational and legal interpreters, of a vague and ancient description, the counsel reverses all rules of evidence and of common sense, locates the patent of 1685, in the first instance, arbitrarily, and from that makes out his pretence of fraud.

Can it be pretended that at this day we are called upon to locate the patent of 1685 by oral testimony, one hundred and sixty five years having elapsed since that patent was issued; or in any way, except by the subsequent patents, possession, use, surveys, maps and other acts of the parties, as evidenced by old documents and papers.

But from the patent itself, *it does appear*, that it was a grant of about 600 acres of flat or plain land, and *in addition* of a large tract of upland. This appears from the number of places mentioned by Indian names, not known at this day, by the number of creeks mentioned, there being no less than four, viz. the *Roeliff Jansen's Kill*—*Quisickkook*, *Shaanpook* or *Twastawekak*, and *Nachawawackkano*. Two high mountains are mentioned, one in forepart of the description and the other in the latter part. One of the courses is to a *high place* to the westward of a high mountain, where two black oak trees are marked, L. and is called by the natives “Kackkawagick,” it runs along the foot of the high mountains to the path that goes to Wawijachtanook, to a hill called by the Indians Mannanosick, where two trees are marked L. The flat or plain land on the Roeliff Jansen, containing about 300 Morgan or 600 acres, is called Minishtanook, not Taghkanic, the whole tract including the flat or plain on both sides of the creek is called Taghkanic. The creek Nachawawackkano comes into the Twastawekak—the *Twastawekak is the western boundary*, not the *Roeliff Jansen's kill*. The place where the two creeks Nachawawackkano and Twastawekak meet is called Mawicknack.

Now can any one believe for a moment that all these four creeks, high mountains, hills and places, were contained within 600 acres of flat or plain land.

Read the description of the tract in the patent and then look at the black spot on the map, *the counsel's Taghkanic*; there are but two creeks that touch his Taghkanic, the Roelif Jansen's is one, and that he marks his *westerly boundary*, directly against the words of the patent. From the patent you see one of the lines *crosses* a creek. Look at the black spot! do you see any creek running through it? The counsel calls his 600 acres Taghkanic, and would have you believe that that was the name of the flat or plain and was 18 miles from the river, when at this day you have a whole town of the manor within five miles of the river called Taghkanic. Now can anything be more unjustifiable than this location and map of the counsel, and his subsequent allegation of fraud on the strength of it, and his extensive publication of that allegation with his map, in the New York Tribune and other papers.

Having shown that the counsel's construction of the patent of 1685, is arbitrary, repugnant to its language, and most evident meaning and import, and therefore that the premises he *assumes*, to mark out his

charge of fraud in the subsequent patents, *is false* ; it is unnecessary to examine any further this celebrated part of his argument ; but to make this matter more palpable, and to show how utterly untenable not only, but how *unjustifiable* this charge is, we will add a word or two in addition on this part of the case.

The patent of 1685 does not say, that the tract of land thereby granted was not adjacent to the river tract. We cannot tell at this day, except from the patents, whether they were in fact adjacent, or not.

The patent of 1686 does say, that the tract granted by the patent of 1685 was adjacent to the river tract : they may have been *adjacent* and not *contiguous*.

The patent of 1686, we think on *its face*, purports to grant in addition to the lands granted by the patents of 1684 and 1685, other lands. It describes the tract by *general boundaries*, and it would be strange ; if *those* boundaries included only the tracts of 1684 and 1685. It says "all which *several* tracts," &c. are bounded as follows—not "which said *two* tracts," are bounded, &c. It is fairly to be presumed, that by mistake, the purchase of other lands by Robert Livingston, was omitted in the recital of this patent. We have his memoranda of other Indian deeds for other lands.

The patent of 1686 did in fact grant *other* lands, in addition to the lands granted by the patents of 1684 and of 1685. If that fact is not stated in the patent of 1686, nor plainly inferrible from the whole patent, yet it is stated in the patent of 1715 ; and even admitting (of which however, there is not a pretence, and the contrary of which expressly appears by the patent of 1715,) that Robert Livingston did conceal from Gov. Dongan that the description in the patent of 1686 did take in more lands than the patents of 1684 and 1685, yet strange that telling the truth to Governor Hunter in 1715 and the recital of that fact therein, should make void the patent of 1715. If it does so, then this case is unique, not only in its law, but its morals ; and it must be confessed that there are many good reasons for so thinking. Now we submit that this cry of *fraud, fraud*, is a most naked, bald, inexcusable attack on the defendant's title, unsupported by a single reason or fact to justify it ; a slander of his title ; which, laboriously published as it has been, should make the authors of it and the publishers of it, responsible not only to the law, but to the moral sense of the community. That it has had its effect ; that it has seriously injured

not only the defendant, but all those holding lands under this title, I freely admit; that the adoption of it by the State; its public reiteration by the Attorney General, and other distinguished counsel for the State, supported and enforced in this case, by sophistry of reasoning and parade of authority, cited with solemn mockery; its subsequent publication with this reasoning and show of authority, in the public journals of the day, headed "Fraud by wholesale," increased and should have prolonged this injurious effect, is not surprising, and is freely conceded; and the counsel on the other side, are entitled to all the *glory* which has followed or will follow therefrom. But "there is one glory of the sun, another of the moon, and another of the stars, for one star differeth from another in glory." There is a glory of a Nero fiddling while Rome was burning—and another glory of the Architects of her temples and of the Sculptors of her marble.

The counsels map with the black spot at Taghkanic has been published. He is entitled to all the glory of *it*; but I shall be much mistaken, if he does not, ere long, cry out with Lady Macbeth, "out damned spot."

Having established as we think, by the preceding points and authorities, that before the Revolution, the recorded Parchment and paper title of Robert Livingston was good and perfect as against the Crown; and if not so, that any defects were cured or supplied by the recognitions and acquiescence of the Colonial government and its officers, and by the possession, acts of ownership and exercise of franchise rights, by him and his descendants under the grants; our next point is, and it may be considered as the *Second* general proposition taken by us in this case, to wit:

S E C O N D :

That the Revolution did not affect such title; that a Revolution does not affect vested rights.

Kelsey vs. Harrison, 2 John Cases 30,
 Jackson vs. Lunn 3 John do. 118.
 8 Peters 444, 5, 451.
 7 do. 86, 7, 8.
 16 do. 198, 9.
 2 Wheaton 267.

That the acquiescence and recognitions of the Colonial government

bind the State, and would give validity to a grant although originally imperfect. See

- 7 Peters 86, 7, 8.
 - Canal appraisers vs. People, 17 Wend. 608.
 - 16 Peters 408, 9,
 - 3 Pick 224.
 - 9 Wend. 381, People vs. Manhattan Co.
 - 10 John. 417, Jackson, ex. dem, People vs. Pierce.
 - 7 Peters 89, to 95.
 - 14 do. 410.
 - 8 U. S. St. at L. 258. Art. 8 Florida Treaty.
- This principle is assumed or decided in all these cases.

THIRD:

The People of this State are *Estopped* from claiming title to these lands by the acts of the Colonial Government; of its Legislature and Officers, and agents before the Revolution; and of *their* Government, of *their* Legislature and Officers, since the Revolution:

- 16 Peters, 262, 232.
- 1 Howard, 97.
- 14 Peters, 365, Pollard heirs vs. Kirby.
- 13 do 133.
- 10 do 322.
- 2 do 230.
- 7 do 85, 89, 90, 92, 93.
- 6 do 691, 746, 727. (Arredondo case.)
- 5, N. Hamp., 280-4-5.
- 6, Pick., 414.
- 3, do 224.
- Jackson Ex. dem, the People vs. Pierce.
- 10, John. 414-15.
- 9, Wend. 351.
- 15, do 130-1.
- 4, Peters, 87-8. Carville vs. Astor.
- 16, do 143, 228.
- 12, do 484,
- 5, do 241. Patterson vs. Winn.
- 5, do 729.
- 6, do 628, 629.
- 17, Wend. 608.
- 30, St. Tr. 869, 871.
- 17, Wend. 617.
- 16, Peters, 408-9.

The acts more particularly relied on under this point, are; the act of 1691 confirming patents; the act of 1710, confirming and quieting possession; the acceptance by Governor Hunter, in 1710, of the grant from Robert Livingston of 6000 acres of the Manor,—(afterwards settled by the Palatines, and now called Germantown;) the act of 1717, annexing that part of the Manor of Livingston which then lay in the County of Dutchess to the County of Albany.—(This act ex-

pressly recognizes the validity of all the patents, including the patent of 1715 ; the existence of the Manor of Livingston, and the right of the inhabitants thereof to choose assessors, &c., and to be represented as a *Manor* in the Colonial Assembly, as granted by the patents ;—) the various acts erecting and bounding the Counties of Albany and Dutchess, and erecting those Counties into precincts and districts ; the minutes of the Colonial Council ; proclamations of Governors Clinton, De Lancey, and Colden ; and the receipt and payment of the quit rents reserved in the patents in full to 1765,—*before the Revolution* ; the receipt of the State Auditor in 1787, by authority of express acts of the Legislature of this State, in full for quit rent under the patent of 1715, from 1765 to 29th September, 1787, and for a commutation of fourteen years at 28s. per annum ; the proceedings of the Legislature, report of Committee, resolutions, &c., on the petition of Petrus Polfer and others, in 1795 ; and the report of the Attorney General and Surveyor General, adopted by the Legislature, on the petition of Henry Avery and others in 1811,—*after the Revolution*.

Indeed, the issuing of the patent of 1715, considered as a mere act of confirmation of the patent of 1686, is an act which of itself *estops* this State from questioning the patent of 1686. It ought to estop this State : If the *Crown* chose to confirm the patent of 1686, what have the People of this State to do with that ? What right have *they* to question the *right* or *propriety* of such act or confirmation ? Governor Hunter was responsible for that act of confirmation to *his King*, and not to the People of this State. It was an act which could then be questioned only by the King ; and it cannot now be questioned by *any one*, certainly not by the People of this State, who claim under title or right from the same source, *younger than ours*.

A State is *estopped* by its admissions :

10, Mass. Rep. 155.
6, Cowen, 587. Jackson vs. Cole.
3 Pick., 224.
5, N. Hamp., 280.

Recitals and admissions in acts of Parliament are evidence to prove the existence of such facts against *individuals*, and if so, a-fortiori, they are against the State.

Starkies Ev. part 2 § 41, 43.
Comyn Dig—Title Franchise, B. E.
Coke Littleton 19b.
4 Maule L. Selwyn 532.
2 Str. 1066.

FOURTH:

The people are barred and prevented from maintaining this suit, by four statutes of limitations, passed at different periods by themselves. The statute of 1788, of 1801, the statute of 1830 in 2d Rev. Statutes, of 1849 in the new Code.

These statutes are in the form of a promise or obligation. They are severally solemn promises by the Sovereign to the Subject. The passage of the second act, did not release the People from the obligations of the first ; nor were the rights of the defendant and of his ancestors which became vested under the first act, divested or affected by the second ; and so with regard to each subsequent act. These statutes apply and attach not only to a *previous* ; but *subsequent* possession.

If the ancestors of the deft. on the first day of January 1800, had claimed, or had the Manor ; or had taken the rents, revenues, issues, or profits thereof for 40 years prior to the first day of January 1800; then, by the plain and express words of the statute of 1788, their claim or holding gave them and their descendants from and after the 1st Jan'y 1800, a "good title against the people of this State forever; and (if there is any faith to be put in statutes,) protected them, not only against any ejectment that might thereafter be brought to recover any part of that manor, but also against any scire facias, suit, or proceeding, to annul the letters patent under which they claimed. The word "Manors" is expressly used in the statute. There were then, and never have been but three manors in the State ; that of Van Rensselaer, Livingston, and Cortland. The claim or holding called for by this statute, to bring the person or persons within its protection ; should be held to be such a claim and holding, as the *thing* held or claimed was in the ordinary way susceptible of. You would not hold that a *manor*, was to be possessed, or held, in the same way as a village lot or a farm ; you would expect it to be divided into farms and woodlots, occupied by tenants, and you would expect it to include commons or unenclosed tracts of woodland.

Such a possession and holding, is proved in this case (not to go any further back) since the year 1750 ; and in this case, we have shewn certainly a claim to the whole manor, by the exercise of the Franchises granted by the patents, such as choosing constables and assessors and sending a representative to the Colonial Assembly, &c., for the whole manor ; besides a great number of acts of the proprietors of the

manor and of the government, both of the Colony and of this State ; and not only showing and acknowledging a claim, but also a possession.

When the words of a statute are plain and unequivocal, no court has a right to give to the statute any other construction than its words plainly and commonly import. To take away a man's property by a forced judicial construction of a statute, under the plea of the exercise of judicial discretion, against its plain meaning, would be as unjust and illegal, as to pass unjust and unconstitutional statutes for that very purpose ; indeed, the latter would be the least dangerous of the two ; of *its* bold attack you would have notice, and could protect yourself under the constitution ; whilst the former might silently fritter away your rights, with a show of reasoning and of authorities.

Now all the reasoning with reference to the statute of 1788 applies with equal force to the statute of 1801. The word "manors" is also used in that statute.

The only possible question therefore, that there can be as to our protection under these statutes, or either of them, is, whether the ancestors of the defendant claimed or held the "Manor", as a "Manor" could be claimed or held. Is there any question about that in this case, from the evidence ? And even as matter of law, it was decided in the case, of the Proprietor of the manor of Livingston against Schutt, as early as 1796, by the Supreme Court of this State on a demurrer to evidence, and which decision was afterwards in 1797 affirmed unanimously by the Court of Errors, that *upon the ground of possession alone*, independent of the Parchment and paper title, the Proprietor was entitled to recover in that suit (which was ejectment for a lot of unenclosed land which lay within the limits of the Manor of Livingston.)

This case is cited and stated by Kent, Justice, in Jackson vs. Lunn 3 John. Cases 118.

The Court will see that the evidence of such possession of the Manor admitted by the demurrer in that case, was not by any means as conclusive to establish *such possession*, as the evidence which we have introduced in this case. To show that the Statutes of Limitations in the Rev. Statutes and in the Code, protect the defendant against all proceedings by the State, by scire-facias, or otherwise, to vacate letters patent issued by the Crown before the 14th day of October, 1775 ; we refer the Court to that part of those statutes which give the right to

bring a suit within 20 years in the one, and 40 years in the other, after letters patent issued by the *People of the State have been vacated*; there being in neither of those statutes any provision for vacating letters patent issued before the Revolution, and no saving clause giving a right to sue after the vacating of any patents, except those issued by the People.

It may also be remarked, as strongly corroborative of this view of the statutes of limitations in the Rev. St. and the Code, that whilst the Rev. St. and the Code both *do* provide a *mode* of vacating letters patent issued by the People, *they do not* for the vacating letters patent issued by the Crown; and that the Code abolishes the writ of *scire facias*, and substitutes certain civil actions in its place, specifying particularly these actions, and for what purposes they may be brought by the Attorney General of the State; and amongst them, *is* an action to vacate or annul letters patent granted by the People of *this State*, but there is *no action given* to repeal letters patent issued by the Crown before the Revolution. (See Code of Procedure, §428, &c.)

FIFTH:

Independent of the Statutes of Limitations, and without reference to the doctrine of estoppel above stated: neither the State of New York nor the United States, has the *right* or *power* to question or invalidate, either collaterally, or *directly* by suit or proceeding for that purpose, the patents, or either of them, issued by the Crown to Robert Livingston; for fraud, want of regularity, mistake or any other defect, or cause antecedent to, or existing at the time of the issuing those patents, *de hors the record and not appearing on their face*.

The truth of this proposition, bold as it is, results in part at least from what has been already shown; and the proposition itself may be said to be, but a corollary from certain of the propositions above laid down and established most abundantly by authority: but I shall also illustrate and prove it by a reference to other principles of the Common Law, &c.

It is admitted,—and if not admitted, the authorities above cited for that purpose, 5th Denio and others, shew, that in a suit between individuals claiming under the *same source of title*, a patent cannot be attacked collaterally for any defect not appearing on its face.

If a suit or proceeding is instituted directly for the purpose of vacating or invalidating a patent; such suit or proceeding may be for the benefit of an individual, but it is presumed it must be in the *name* of the Body Politic or Sovereign from whom the patent emanated, or of his, her, or their successors.

The People of this State and the Defendant, both derive title from the *same source*—both from the British Crown; the defendant by Grant or Patent, the People by Revolution;—the defendant's title is the *oldest*.

By the law of Nations and the principles of Justice, as acknowledged and recognized by all civilized Governments, (and as recognized and declared by the People themselves by the statute of 1779,) the People of this State took by the Revolution merely, (independent of treaty stipulations,) so far as it respects property, no more than they would have taken under a grant, of all his right and title, &c., from the British Sovereign. (See authorities above cited as to effect of Revolution on vested rights; and Statute passed 22, October 1779, 1 Jones & Varrick, 44.)

Where there is a treaty and no stipulations in it with regard to *property*, the law of Nations and the principles of Justice, as recognized and judicially declared, must settle the *rights of property*.

In the Arredondo case, 6 Peters, above cited, the Court called the Treaty for the cession of the Floridas a *grant*, and decided the case between the parties, the claimants on the one side, and the United States on the other, severally as *grantees* of the Crown of Spain.

There is no difference in principle, whether property or title is acquired by Revolution, or taken by Cession, calling for the application of different principles of law, or rules of evidence. In either case the vested rights of individuals are respected; and the new Sovereign and the Subject, in adjudicating on rights and property derived from the same source of title, the old Sovereign, are to be treated severally as grantees of the same grantor, in applying the rules of evidence and the principles of law.

It follows therefore that in this case, the People and the Defendant, are both to be considered, and their rights adjudicated upon, as *grantees*, claiming under the British Crown, or as individuals both claiming by

patent or grant from the People of the State of New York, the same sovereign.

Does it not therefore follow, that the law that a patent cannot be attacked *collaterally* applies to the People in this suit and controls them? And does it not also follow; (the Colonial government being presumed to have had a general authority to grant) that this State, nor the United States, has any power or right, by a suit or proceeding instituted *directly* for that purpose, to invalidate or question such grants? Would not such a suit or proceeding, be in fact, attacking them *collaterally*; *collaterally*, in respect to the British Crown, from whom both titles emanated? Did not such right vest, and (if it yet exists anywhere) does it not now exist in the British Crown? At the Revolution, Robert Livingston was in the possession of, and claimed title to the Manor by patents fair on their face, executed in due form, and presumed even against the Crown to have been issued by authority. The *Crown*, had a right to institute a suit or proceeding to vacate the patents, for causes *de hors* the patents. This right was a mere "cause of suit." "This cause of suit," the British Sovereign could not have transferred even by grant to the People of the State of New York. He was prevented by the common law. In Bacon's Abridgment, vol. 2, 654 Title Grants (D) it is said: "The common law hath so utter an abhorrence to any act that may promote maintenance, that regularly it will not suffer a possibility, right of entry, or thing in action, or cause of suit, or title for a condition broken, to be granted or assigned over."

Citing 21, East. 4, 24.
Co. Lit. 214, 1, Rol. abr. 376.
2 Rol. abr. 45, &c.

The Treaty of Peace of 1783, could not, and did not transfer such "cause of suit."

By the first Article of the Treaty of Peace of 1783, the King relinquishes to the several States, "All claims to the government, property, and territorial rights of the same, and every part thereof." By the 5th article of same treaty, it was agreed "that Congress shall earnestly recommend it to the Legislatures of the several States, to provide for the restitution of all estates, rights, and property which have been confiscated, belonging to real British subjects, &c." Strange, that by this article, the estates of British subjects, which *had been* confiscated, should have been cared for, and yet it should be claimed, that either by the Treaty, or by the Revolution, the People

of the several States acquired the right or the power, to enquire into the validity of the grants from the Crown—and stranger still, that within less than 70 years from the execution of this Treaty, we should find the People of this State, by their Attorney General, citing to this court, in this case, the black letter of England, supporting and enforcing the high prerogatives of the Crown, in the days of the Stewarts; for the purpose of depriving of their property, the Descendants of a Family, than which, not one contributed more in intellect or influence to work out that Independence, which was perfected by this Treaty.

The Framers of the first and subsequent Constitutions of this State, and the People themselves, so far as we can judge from their legislation, it would appear, have had the same view of the subject and of their rights.

By the 35th Article of the first Constitution of the State of New York (1777) it is declared: "That such parts of the Common law of England, and of the Statute law of England and Great Britain, and of the acts of the Legislature of the Colony of New York, as together did form the law of the said Colony, on the 19th day of April, 1775, shall be and continue the law of the State, subject to such alterations &c."

By the 36th Article of the same Constitution (1777) it is declared: "That all grants of land, within this State, made by the King of Great Britain, or persons acting under his authority, after the 14th day of October, 1775, shall be null and void, but that nothing in this Constitution contained, shall be construed to affect any grants of land, within this State, made by the authority of the said King, or his predecessors, or to annul any charters to bodies Politic, by him or them, or any of them made prior to that day, &c."

These provisions of the Constitution of 1777, are renewed in the Constitutions of 1821 and of 1846.

By the 14th section of the act, entitled "An act for the forfeiture and sale of estates of persons who have adhered to the enemies of the State, and for declaring the sovereignty of the People of this State, in respect to all property within the same," passed 22d October, 1779, (1 Jones & Varick 44) it is declared: "That the absolute property of all messuages, lands, tenements and hereditaments, and of all rents, Royalties, franchises, prerogative, privileges, escheats, forfeitures, debts, dues, duties and services, by whatsoever names respectively, the same are called and known in the law; and all right and title to the same,

which next and immediately before the 9th day of July 1776, did vest in, or belong, or was, or were due to the Crown of Great Britain, be, and the same and each of them, hereby are declared to be, and ever since the said 9th day of July, 1776 to have been, and forever hereafter shall be, vested in the People of this State, in whom the sovereignty and seignory thereof, are and were united and vested, on and from the said 9th day of July, 1776."

This statute is in effect merely declarative of the law of Nations, and of the principles of Justice, as establishing the rights of property acquired by Cession or Revolution.—(See authorities above cited as to the effect of Revolutions, &c., on Vested Rights.)

The Statutes of Limitations of 1788, of 1801, in 2d Rev. Statutes, and in the Code, may all be referred to under this point, as not containing any provision saving the rights of the People to sue, &c., after the vacating or annulling of Letters Patent *issued by the Crown*, although the two last Statutes do contain such provisions in the case of Letters Patent issued by the People of this State.

From these provisions being *in the Constitution*, and from the *absence* of any provision therein, or any subsequent acts of the Legislature, declaring the manner in which the validity of patents issued by the Crown prior to the 14th day of October, 1775, might be inquired into; we may reasonably infer, either a want of power, or an absence of right to do it; or agreeably to the doctrine in 6th Peters 722, that such patents were not intended to be questioned; see also *Harcourt vs. Gallard*, 12th, Wheat. 528.

But, even if this "cause of suit" did pass by the Revolution, or by the Treaty, from the Crown, it can certainly be urged with a good deal of plausibility, that such "cause of suit" or right to invalidate these patents, passed to the *United States*, and not to the State of New-York; and that in that case, it yet remains in the United States, and not in the State of New York. The Revolution, was not a revolution, was not a dismemberment of the State or Province of New York, but of the *thirteen* States or Provinces—it was not the revolution of this State alone, but of the 13 States. The history of the Confederation before the adoption of the Constitution of the United States, and the questions as to property, then agitated not only between the States, but between several of them and the United States, might be referred to here as giving greater plausibility and even force to this suggestion.

The fact that the People and the Defendant, so far as it regards the subject matter of this suit, both stand in the relation severally of *grantees* of the British Crown, ought not to be forgotten by the Court: it has a most important bearing not only on this point of power and right in the People of this State to vacate or question these patents, whether *collaterally* in this suit, or *directly* in another suit instituted for that purpose; but also upon, the questions of admissibility of evidence; its application and bearing when admitted; the application of principles of law, with regard to the doctrine of Estoppel; and the effect and force of the recitals in the Patents; of acts of recognition; and even upon the construction of the Patents themselves. It is clear that as between two *grantees*, of the *same* thing, from the *same* grantor, the facts recited by the grantor in the oldest grant or patent, are to be taken as true without other proof—(See 6 Peters, 724–728)—*whatever* might be the rule in a suit between the Crown or Sovereign who made the patent, and the patentee. And it may be claimed, I think, that such recitals would be *conclusive* against the younger grantee. So also whatever might be the rule as between the Sovereign who made the grant and his grantee, as to the recitals in a patent being the *suggestions* of the party, and not the *recitals* of the Crown, it would be absurd and against all principle to apply that rule as between the two grantees; and so also as to the rule, that the grant of the Sovereign, (as an exception to the common rule of construction,) is to be taken most strongly against the grantee, in favor of the grantor. What reason is there for the application of that rule in this case? What right have the People to ask this Court to apply these rules in this case? *Our* title is *older* than *theirs*. Indeed it may asked with perfect justice, though not perhaps with striking courtesy, What *business* have the People to place themselves in a position that calls for the application of these rules?—Robert Livingston never defrauded *them*.

Whether the Colonial Governor exceeded his general authority, abused his discretion, granted *with* the advice of his Council, or *without* it; whether surveys were made, Indian title extinguished, or any other Colonial regulation relative to the issue of these Patents, were omitted or observed, in the issuing of these Patents, were all questions between the *Colonial Governor and his Sovereign*, and not between the People of this State and the Defendant.

In the Arredondo case, 6th Peters, 729, it is said by the Court:—
“The validity and legality of an act done by a Governor of a con-

quered Province, depends on the jurisdiction over the subject matter delegated to him by his instructions from the King, and the local laws and usages of the Colony, when they have been adopted as the rules for its government. If any jurisdiction is given, and not limited, all acts done in its exercise are legal and valid ; if there is a discretion conferred, its abuse is a matter between the Governor and his Government," &c. Citing *King vs. Pictou*, late Governor of Trinidad, 30 St. Tr. 869, 871. And again, same page—"It is a universal principle, that where Power or Jurisdiction is delegated to any officer or tribunal, over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding as to the subject matter, and individual rights will not be disturbed collaterally for any thing done in the exercise of that discretion, within the authority and power conferred, &c." Citing,

2 Peters, 167, 168.
20 John. 739, 740.
2 Dow. P. Cas. 521.
9 Cranch. 99.
5 Wheaton, 304.

1 Cranch, 170, 171.
4 Wheaton, 423.
2 Peters, 412.
4 do 563.
11 Mass. Rep. 227
11 S. & R. 420.

Upon what principle of *retrospective, ex-post-facto* transmigration, or transmutation of rights, moral or legal, did the Revolution give the People of this State the right or power to *go back*, step into the shoes of the British Sovereign, assume his prerogatives and conscience, and legal privileges, and for him, or for themselves for their benefit, raise or enquire into *any* of these questions ? If they have that right or power, then the Revolution must have been not only a Revolution of Property, but of *principle* ; and the doctrine of the Transmigration of Souls, held by the Priests of Egypt and by Pythagoras their student, has been strongly illustrated in modern times by a political Revolution of the 18th Century.

Let it therefore not be forgotten, as a controlling principle in this case, that the People and the Defendant are to be looked upon and treated as grantees severally, of the *same thing*, from the *same grantor* ; that the Defendant's *Grant*, by which *he got title*, is *older* than the Plaintiffs' *Revolution*, by which they *claim title* ; that this principle renders it unnecessary to examine or controvert most of the authorities referred to by the Counsel of the People in this case, as to construction, recitals, suggestions in patent, &c., and is an answer to most of his *positions*—that this principle is of great importance in determining the *power* and *right* of the People to bring these suits, and to agitate

and urge most of the points and positions taken by their Counsel in this suit.

When I speak of power and right, I mean *legal* and *Constitutional* power and right; of power and right restrained, and regulated, and sustained, by law and judicial decisions; not the power and right claimed by political mobs, or party organizations, interpreted and enforced by morbid, ill-defined, ill-digested and impracticable notions of abstract right, and of the “spirit of the age and of our institutions,”—I speak not of a power or right *above the* Constitution and Laws.

And now, before I conclude, let me say something of the *history* of this case and of its *moral aspect* :

We have here a title which was good and unquestionable, by record, by parchment, and by possession, against the Crown of England its author and source; good and unquestionable against the People of this State, the successors of that Crown, by the principles of Justice, the law of Nations, and the common law, by the express letter of three written Constitutions, and of four statutes of Limitations; and good by possession alone, against the whole world.

A title, which in fact, never has been disputed by any one, except by those prompted to do so by *political ambition*, or supposed *pecuniary interest*.

But it is disputed—first, by armed mobs disguised like Indians, and in blood; next, by political organizations and in political speeches—it is brought to bear upon the Legislature—it is legislated about—it is legislated about as *a question*, as a *dispute* between the Landlord and the Tenants; it is *assumed to be a question*—the *title* is questioned; there is a dispute between the *parties*—it must be adjusted by the Legislature—a resolution is passed in 1848, authorizing the Attorney General to bring a suit, if upon examination he thinks there is just cause, &c. *This suit* is brought in the *name of the People of this State*, and *purports* to have been brought by the *late Attorney General*. He ought to have examined this title before he brought the suit. He was bound to do so by the resolution of 1848. Did he examine it? and did he by commencing this suit, mean to publish to the world, under his oath of office, that the people of this State had any *just claim* to any part of the lands held under this title?

But the suit is commenced—a new Attorney General comes in—the Legislature convene. Petition after petition, comes before that legislature to have a law passed restraining this defendant not only, but *all persons*, holding lands under this title, from collecting any rents, &c., accruing from the particular lot for which the suit was brought not only, but from *any* and *all* parts and portions of the 150,000 acres and upwards, held under this title; and the new Attorney General, Mr. Chatfield, in a certain report made by him to the Legislature, relative to this suit and other manorial suits, recommends the Legislature to pass such a law;—such a law, or one equally obnoxious in its principles, actually does pass the Senate, and wants but few votes of passing the House. Well, the suit is to be tried—we come on to trial; and we find opposed to us not alone, the well known legal ability and distinguished talent of the Attorney General, but with him one of the most distinguished Counsel of the State, distinguished not only as a Lawyer, but as a *Politician*. We proceed to impanel the Jury—we ask the Attorney General and his associate counsel to consent that all the jurors from the Manor towns, holding lands under this title, should be set aside—they decline consenting to this proposition—stating in substance that this was a suit to try the title of the 150 acres of woodland described in the complaint, and had *nothing to do* with the title of the *Manor* of Livingston.

Well, the Jury was impaneled, and the result was, that several of the Jury that was impaneled, were from the Manor towns, and held their farms under this very title.

Mr. Van Buren proceeds to open the case on the part of the People; among other things, he tells the Jury, that the People had great difficulty in finding in the Manor a piece of wild wood land, that would *avoid the question of possession*; that at last they had found such a piece, and for *that*, the suit was brought—that if any of the Jury held lands under this title, they must not let *that* influence their verdict—that they must rely upon the *magnanimity* and *generosity* of the State which he (Mr. Van Buren) thought there was no doubt would be extended to them—that the defendant could not under the pleadings *introduce his title*, because he had not in his answer set out the patents and other documentary evidence of his title, but had merely alledged title in himself and his ancestors.

All this was said by Mr. Van Buren in the hearing of, and with the apparent approval of the Attorney General. We proceed to trial—

witnesses are called by the People; amongst others, Henry A. Link, a tenant holding lands under this title, by life lease. On his cross examination, he testified: that he and other Anti-Renters had employed Mr. Van Buren as counsel in this case, that he had paid five dollars towards his counsel fee, and that he and others had signed a note for \$250, to raise money upon it to employ counsel. He also testified that he expected, and had so told his neighbors, that if the State recovered he would get the fee of his farm for \$1,25 per acre.

Mr. Chatfield, the Attorney General, stated in open court subsequent to this testimony of Link's—that he had, as Attorney General, also employed Mr. Van Buren as counsel for the State.

The foregoing are the facts, so far as I intend to say anything of the history of this suit and its proceedings. I have not a word of comment to make on them or any other part of this case, except this: That in my judgment a more inexcusable wrong, a more unjustifiable act of oppression, never was perpetrated by a Sovereign towards its Subject, than has been perpetrated by the commencement of this suit under the impulses, and with the intention it was commenced, as those motives and as that intention are evidenced by its history up to this time.

We take pleasure in saying however, with perfect sincerity, that we have no cause whatever to complain of this court, although the court has reason to complain of us for the time consumed in this discussion.

Before we conclude, we wish to acknowledge our obligations to Daniel Gardner, Esq., of Troy, for a reference to many of the authorities cited by us in this case, particularly as to Estoppel, and the effect of State and Colonial recognitions, and which are cited by him in a Manuscript Treatise of his, about being published by Messrs. Little & Co., of Albany.

Errors of Press.

☞ Page 14, 8th line from top, read “by DeWitt Surveyor-General,” instead of DeWitt by Surveyor-General.

Same Page, 3d line from bottom, read “200” instead of “2000.”