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GROUND RENTS IN PENNSYLVANIA.

No. I.

The law applicable to *ground rents*, as they exist in Pennsylvania—a subject which, though perhaps, more particularly interesting to the Pennsylvania lawyer—cannot, we think, prove altogether unattractive to the profession at large. We are not aware that ground rents, *eo nomine*, and as a species of real estate, exist in any other state of the Union; but, being in their nature a *common law rent*, a brief exposition of some portions of the law in reference to them, must, we believe, be of practical utility, wherever the decisions of the Supreme judicial tribunal of this state, are at all regarded.

A rent reserved to himself and his heirs by the grantor of land in fee simple, out of the land conveyed, is termed in Pennsylvania, a *ground rent*.<sup>1</sup>

A ground rent, as already intimated, is real estate, and in a case of intestacy goes to the heir.<sup>2</sup> In *Bosler vs. Kuhn*, Ch. Justice Gibson says of this rent, that “like rent granted for owelty of partition, or in lieu of dower, it partakes of the realty, and has *no touch of personal responsibility in its complexion*,” and that “even where

<sup>1</sup> See *Kenege vs. Elliott*, 9 W. 262; *Bosler vs. Kuhn*, 8 W. & S. 185.

<sup>2</sup> *Cobb vs. Liddle*, 2 H. 444.

the reservation is attended by a clause of distress, *the land is exclusively the debtor.*" It is not, of course intended by this that the grantee of the land is not personally liable upon his express covenant to pay the rent, or in an action of debt or assumpsit,<sup>1</sup> where there is no such covenant, and that the judgment is *de terris*. But we apprehend Chief Justice Gibson's meaning to be, that the obligation to pay this rent arises from no mere personal covenant to pay, but by force of the *reservation* of the rent and acceptance of the land; the former of which is by words exclusively of the grantor himself, but by which the grantee becomes bound upon acceptance of the estate.<sup>2</sup> The ground rent is created by the *reservation* and not by the covenant to pay; the consideration for the payment of the rent is the enjoyment of the land,<sup>3</sup> there is, therefore, no personal responsibility independent of that enjoyment, and hence the land is termed the *debtor*.<sup>4</sup> "The covenant," says Chief Justice Gibson, in the case cited, "is but an accessory, the rent being the principal." The covenant "is a *security* for the performance of a *collateral act*. Littleton says (sec. 216) that before the statute *Quia emptores terrarum*, (and this is the law in Pennsylvania, as that statute is not in force here)<sup>5</sup> "if a man had made a feoffment in fee simple, by deed or *without deed*, yielding to him and to his heirs a certain rent, this was a rent service, and for this he might have distrained of *common right*. And if there were no reservation of any rent nor of any service, yet the feoffee held of the feoffer by the same service as the feoffer did hold over of his lord next paramount." Pointing out distinctly, what Ch. J. Gibson has stated in such strong language, that the rent is due by virtue of the reservation and enjoyment of the land, without regard to personal covenants for its payment.

<sup>1</sup> See *Maule vs. Weaver*, 7 Barr, 381.

<sup>2</sup> See Co. Litt. 144, a.

<sup>3</sup> *Ingersoll vs. Sergeant*, 1 Wh. 387; *Warner vs. Caulk*, 3 Wh. 197.

<sup>4</sup> So completely is the enjoyment of the land the consideration for the payment of the rent, that the grantee of the land is bound to pay the rent only as long as the title he receives from the grantor proves sufficient to protect and secure him in that enjoyment; *St. Mary's Church, vs. Miles*, 1 Wh. 235 per Kennedy, J.; *Garrison vs. Moore*, 9 Leg. Int. 2, D. C. C. C. of P.; *Nagle vs. Ingersoll*, 7 Barr, 185.

<sup>5</sup> *Ingersoll vs. Sergeant*, 1 Wh. 387.

The interest of the owner of the rent "is considered as an estate altogether distinct, and of a very different nature from that which the owner of the land has in the land itself. Each is considered the owner of a fee simple estate. The one has an estate of inheritance in the rent, and the other has an estate of inheritance in the land out of which the rent issues. The one is an incorporeal inheritance in fee, and the other is a corporeal inheritance in fee."<sup>1</sup> The owner of the rent is not liable for any part of the taxes assessed upon the land out of which the rent issues,<sup>2</sup> and each is made by our acts of assembly separate and distinct subjects of taxation.<sup>3</sup>

Being real estate, ground rents are, of course, bound by a judgment, and a mortgage of them comes within the purview of the recording acts of this State.

Although they are frequently called, by conveyancers and others, rents *charge*, and although in drawing the ground rent deed they are invariably treated as such—the land being expressly charged with the right of distress—yet since the case of *Ingersoll vs. Sergeant*,<sup>4</sup> it has been settled they are rents *service*. A brief view of the distinguishing characteristics of a rent service, and the mode in which they have been affected by the statute *Quia emptores terrarum*, will exhibit the principles upon which the law, as thus settled, rests.

A rent service, which was the only kind of rent originally known to the common law,<sup>5</sup> arose out of and was dependent upon the system of tenures which existed under the feudal law, viz: that of *subinfeudation*.<sup>6</sup> Anciently, whenever land was held by homage or fealty, or both, and rent, the rent was a rent service.<sup>7</sup> Homage and the oath of fealty or fidelity were the consequence of *tenure*,

<sup>1</sup> *Irwin vs. Bank of United States*, 1 Barr, 349, per Kennedy, J.

<sup>2</sup> *Philada. Lib. Co. vs. Ingham*, 1 Wh. 72. *Franciscus vs. Reigart* 4 W. 98.

<sup>3</sup> *Irwin vs. Bank of U. S. Supra*.

<sup>4</sup> 1 Wh. 337, see also *Franciscus vs. Reigart*, 4 W. 98; and *Kenege vs. Elliott*, 9 W. 262.

<sup>5</sup> Thomas' note to *Co. Litt.* vol. 1, p. 442.

<sup>6</sup> 2 Inst. 505, *Bacon's Abr. Rent*, 5, *Gilb. Rents*, 15.

<sup>7</sup> *Litt. Sec.* 213.

and were due by the tenant to the lord of whom he held his lands.<sup>1</sup> Under the system of subinfeudation the alienee of land held it of his alienor; fealty was therefore due by the former to the latter, and a rent reserved upon such an alienation was a rent service. The character of the rent therefore as a rent service, depended upon the fact of tenure. The statute *Quia emptores terrarum*<sup>2</sup> had the effect of abolishing this tenure upon all sales of land in fee. It enacted that upon all sales of land held in fee simple the feoffee should hold the same of the chief lord of the fee by such services and customs as his feoffor held. Upon the construction of this statute it was held that whenever the whole estate was not conveyed, but a reversion remained in the alienor, the alienee was not feoffatus within the act, and the reversion was sufficient to support the tenure of him; sales, therefore, in which the entire fee was parted with, alone came within the provisions of the statute.<sup>3</sup> After the statute *quia emptores*, consequently, in England, the alienee of land in fee, not holding of his alienor as before, but of the chief lord of the fee—there being no tenure of, and therefore no fealty or service due such alienor—a rent reserved by him was no longer a rent service.

In the case of *Ingersoll vs. Sergeant*, it was held that the statute *quia emptores* was not in force in Pennsylvania, that the law as it stood in England prior to that statute consequently prevailed here, and ground rents, being rents reserved upon a conveyance in fee, were therefore rents service.

This case must be regarded as establishing the existence of the system of tenures in Pennsylvania;<sup>4</sup> we find it stated, nevertheless, by a distinguished jurist, in a work published two years subsequently, that on this point different opinions are entertained, some holding that the property of the tenant in fee simple since the revolution is allodial.<sup>5</sup>

A ground rent, being a rent service, is attended by all the inci-

<sup>1</sup> Inst. 505, Bac. Abr. Rents, 5; Gilb. Rents, 15.

<sup>2</sup> 18 Ed. 3, S. 1, Westm. 3.

<sup>3</sup> Litt. 214, 216; Bac. Abr. Rent, 6; Gilb. Rent, 15.

<sup>4</sup> See also *Robb vs. Beaver*, 2 W. & S. 126; 9 Watts, 262.

<sup>5</sup> *Sergeant's Land Laws of Pennsylvania*, 200.

dents of that species of rent. It is distrainable of *common right*,<sup>1</sup> and the special clause of distress usually inserted in the ground rent deed, is, therefore, inoperative and altogether unnecessary.<sup>2</sup> So, also, it may be apportioned, and questions of much practical interest growing out of this quality have arisen.

In the case of *Ingersoll vs. Sergeant*, a portion of the land out of which the rent issued had been sold to a third person, "clear of all liens and incumbrances whatsoever." Subsequently that portion, in consideration of such sale and a nominal sum, was released from the ground rent, and the question was whether the release did not extinguish the *entire* rent. If the rent was a rent *charge*, it did; but if a rent service, it did not: and upon the ground already stated, it was held to be a rent service and the entire rent not extinguished, but that the portion of land released was discharged from the rent, leaving the remaining part subject to its *due proportion* of the rent.

In this case the part released having been owned by a different person from that to whom the remainder belonged, and the entire rent not being extinguished by the release, justice would seem to require an apportionment. But if it be the legal effect of a release of part of the land from the rent, that the rent is *ipso facto* apportioned and reduced *pro tanto*, then the same consequence must follow if part of the land be released when the whole belongs to the same individual—this, too, though the release be made upon a nominal consideration. And such is undoubtedly the law.

That the rent is apportioned where the owner of the rent purchases part of the land, is well settled. Littleton says (sec. 222) "If a man which hath a rent service purchase a parcel of the land out of which the rent is issuing, this shall not extinguish all, but for the parcel. For a rent service in such case may be apportioned according to the value of the land." The reason is this: a rent service is given as a return for the possession of the *land*; upon the enjoyment of the *land*, therefore, depends the obligation to pay the rent. If the owner of the rent therefore purchases part of the land, the tenant no longer enjoying that portion, is not liable to pay rent for it; so much of the rent as issues out of that portion is conse-

<sup>1</sup> Co. Litt. 142 a.; and See 9 Watts, 262.

<sup>2</sup> Cuthbert vs. Kuhn, 3 Wh. 365.

quently extinguished.<sup>1</sup> In the case of a release of part of the land from the rent—although the tenant continues to enjoy the whole of the land out of which the rent was reserved, yet the rent would seem to be apportioned upon precisely the same reasoning, though put in a somewhat different form—a rent service is given as a return for the possession of the *land*; upon the enjoyment of the *land*, therefore, depends the obligation to pay the rent, consequently if a part of the land be released from the rent, so much of the rent is extinguished, as upon the enjoyment of the remainder of the land depends only the obligation to pay that portion of the rent.<sup>2</sup> A release of part of the land from the rent is equivalent, to releasing the tenant from any obligation to make a return for the possession of the land released, and according to Ch. J. Gibson, in *Cuthbert vs. Kuhn*, 3 Wh. 365, “a rent extinguished in part of the land can be thrown entire on the residue, *only by what is in substance a fresh grant.*” Certainly a release cannot be considered as a *fresh grant* because made upon a nominal consideration. Although the party enjoys the land and has given no actual consideration for the release, yet the nominal sum named is the legal consideration, and there is no consideration whatever for throwing the entire rent upon the residue of the land, or from which to imply a fresh grant.

Unquestionably the parties may agree that the entire rent shall issue out of the remainder of the land. But what would be the effect of such agreement upon the rent? Would not the agreement amount “*in substance to a fresh grant*”? And if so, what becomes of the character of the rent? Is it any longer a rent service? Is it not converted into a rent *charge*, or rent *seck* as it shall or shall not be accompanied by the clause of distress? It assuredly would seem not to be the *same rent*. The original rent issued partly out of other ground; and this by construction of law upon the contract. The parties can scarcely, by a new contract, *withdraw* the rent from any given portion of the land *into* any other portion and there

<sup>1</sup> See 2 Bl. Com. 41; Warner vs. Caulk, 3 Wh. 197; Cuthbert vs. Kuhn, 3 Wh. 365; Ingersoll vs. Sergeant, 1 Wh. 352; St. Mary's Church vs. Miles, 1 Wh. 235.

<sup>2</sup> See Ingersoll vs. Sergeant, 1 Wh. 353; Cuthbert vs. Kuhn, 3 Wh. 365; Warner vs. Caulk, 3 Wh. 197; Garrison vs. Moore, 9 Leg. Int. 2 D. C. C. C. of P.; Naglee vs. Ingersoll, 7 Barr, 185.

concentrate the entire rent. If they could they might thus burthen land worth much more than its share of the original rent, to its entire value, to the destruction of incumbrances attaching subsequently to the creation of the original rent and prior to the concentration of it in the portion.

If the owner of the rent releases part of the land, so much of *that rent* is destroyed, and the parties can only agree that the same *amount* of rent shall issue out of the remainder, and this "only by what is in substance a fresh *grant*." And what is this but a rent *charge* or rent *seck*, as the land shall happen to be or not to be charged with the right of distress? It is a new and different rent created by the owner of the land, not by conveying the land and reserving the rent, but by *granting* the rent out of the land, which he holds in fee.

It is true that in the case of an apportionment arising from a release of part of the land from the rent, or a purchase of part of the land by the owner of the rent, or the taking of part of the land for public use, as in *Cuthbert vs. Kuhn*, or by payment of a sum of money to the owner of the rent, the reduced rent, after apportionment, is not *the rent as originally reserved*, inasmuch as it differs in amount, but it is, nevertheless, *part of the same rent* originally reserved. It is not a rent *created* by the act of apportionment; while in the case of the entire rent thrown on part, the *additional* rent, at least, which that part is made to bear, is plainly a new rent issuing out of that part: and if so, if the *entire* rent does not cease to be a rent service; the additional rent would appear to be a rent charge or rent seck, and the part is encumbered with two distinct rents, the one a rent service and the other a rent charge or rent seck, or if, by reason of the entirety of the contract, they are to be deemed one entire rent, it is either a rent *charge*, or it is a rent composed of elements, utterly incapable of assimilation, presenting a piebald production altogether an anomaly in the law.

In the cases of apportionment mentioned, arising from a release of part of the land &c.,—in short those resulting from operation of law, equity has jurisdiction to decree an apportionment, but the proportions must be settled by a jury.<sup>1</sup>

<sup>1</sup> *Cuthbert vs. Kuhn*, 3 Wh. 357; *Ingersoll vs. Sergeant*, 1 Wh. 337.

In *Ingersoll vs. Sergeant* Mr. Justice Kennedy, after adverting to the law that where rent is incident to the reversion and the reversion has been divided and sold in separate parcels to different vendees, each is entitled to sue or distrain for his respective portion of the rent corresponding with his proportion of the reversion, seems to intimate that a ground rent is divisible in the same manner, and that a father may divide it among his children, or sell a part of it to answer the exigencies of his family. The conclusion appears logical. The owner of the reversion may divide it among any number of persons, and the tenant is bound to pay to each his portion of the rent corresponding with his proportion of the reversion; that is, in other words, the owner of the rent may apportion it among as many as he pleases by dividing the reversion to which it is incident, and each has a separate and distinct right of action against the tenant for his portion. So, in the case of a ground rent, the principle is the same, and the owner of the rent, it would seem, should possess the right of apportioning it among any number of persons, giving to each a distinct and apportioned rent, certain in amount, so as to create several rents instead of one, and for which each could separately sue or distrain. We perceive no distinction between the two cases. The rule, however, in both is wanting in reciprocity, for in neither could the party liable for the rent—the lessee in the one case, and the owner of the fee in the other—apportion the rent by assigning or conveying part of the land, (except, of course, to the owner of the rent himself,) though the purchaser would take, subject to a proportional part of the rent.<sup>1</sup>

At law the legal ownership of these two estates—that in the rent and that in the land out of which it issues, can co-exist only while they are held by different persons or in different rights, for the moment they unite in one person in the same right, the rent is merged and extinguished.<sup>2</sup> In equity, however, this doctrine is subject to very great qualification.

<sup>1</sup> See as to last-point, *Nailer vs. Stanley*, 10 S. & R. 450.

<sup>2</sup> *Phillips vs. Bonsall*, 2 Binn. 142, S. C. 3 Y. 128; *Atwater vs. Lloyd*, 3 P. L. J. 282; *Penington vs. Coats*, 6 Wh. 382; *Dougherty vs. Jack*, 5 W. 457.

A merger is not favored in equity and the doctrine there is that, although in some cases, where the legal estates unite in the same person, in the same right, a merger will take place, *against* the intention of the party whose interests are united,<sup>1</sup> yet, as a general rule, the *intention*, actual or presumed, of such party will govern; and where no intention is expressed, if it appears most for his advantage that a merger should not take place, such will be presumed to have been his intention; and that it is only in cases where it is perfectly indifferent to the party thus interested that, in equity, a merger occurs.<sup>2</sup> Even at law (where, however, mergers are also said to be odious) if the one estate or interest be legal and the other equitable, there is no merger.<sup>3</sup>

A ground rent being a freehold estate, created by deed, and perpetual by the terms of its creation, no mere lapse of time without demand of payment, raises a presumption that the estate has been released.<sup>4</sup> In this state, says Mr. Justice Kennedy, in the case just cited, "We have no statute barring the right of an owner to an estate consisting of a ground rent through his neglect to assert it; nor yet to preclude him from recovering the rent itself, after any lapse of time. It is true that statutes of limitation, embracing legal estates or legal rights alone, have been extended and applied by Courts of equity to estates and rights of an equitable character, in order to guard against evils attending the latter description of estates and rights similar to those provided for in respect to legal estates and legal rights by such statutes; but they have never been extended by either Courts of law or equity, to estates or rights purely legal, not considered as coming within either the letter, spirit, or meaning thereof." Courts of equity would, therefore, have no power to interpose any limitation that would bar a party of his right to enjoy a ground rent, the estate in which is purely legal. This applies to the estate in the rent, and comprehends the future

<sup>1</sup> See *Helmhold vs. Man*, 4 Wh. 421, and cases there cited.

<sup>2</sup> *Dougherty vs. Jack*, 5 W. 457; *Moore vs. Harrisburg Bank*, 8 W. 146; *Helmhold vs. Man*, 4 Wh. 421; *Penington vs. Coats*, 6 Wh. 283; *Richards vs. Ayres*, 1 W. & S. 487.

<sup>3</sup> *Penington vs. Coats*, 6 Wh. 283. <sup>4</sup> *St. Mary's Church vs. Miles*, 1 Wh. 229.

payments. As to the arrearages of the rent, they having become payable, "are a mere debt or chose in action, which from lapse of time a jury might presume had been paid, in the absence of anything tending to show the contrary;" and this presumption would include only those arrearages which fell due twenty years before commencement of suit.<sup>1</sup> Although no presumption of an extinguishment of a ground rent arises from lapse of time and non user, yet it has been held that by "analogy to the act of limitations, which makes an adverse enjoyment of twenty-one years, a bar to an action of ejectment," a jury is required, or at least may be advised by the court to infer a grant after an adverse enjoyment for the space of twenty-one years, that "this is not an absolute presumption, but one that may be rebutted by accounting for the possession consistently with the title existing in another;"<sup>2</sup> and in *Stoever vs. Lessee of Whitman*, 6 Binn. 416, it was held that what circumstances will justify the presumption of a deed, is matter of law, and that it is the duty of the court to give an opinion whether the facts proved will justify the presumption.

A word as to the effect upon ground rents of a sale of the land out of which they issue, for taxes. In *Irwin vs. Bank of the United States*,<sup>3</sup> it was held, that a treasurer's sale of ground, as unseated land, for taxes due and in arrear thereon; did not extinguish the estate of the proprietor of the ground rent, and that the purchaser at such sale, therefore, took the land subject to the ground rent; and the reason given by Mr. Justice Kennedy is, that the estate in the land and that in the rent are separate estates, each made by our Acts of Assembly distinct subjects of taxation, and "there is, therefore, no reason why the collection, or the mode of collecting a tax assessed upon the one, should have any effect whatever upon the other." In *Fager vs. Campbell*, 5 Watts, 288, it was held, that a sale of unseated land for taxes divests the lien of a mortgage, and this because such sale divests the land of *incumbrances*. Ch. J. Gibson, delivering the opinion of the court in this case, says: "The

<sup>1</sup> *St. Mary's Church vs. Miles*, 1 Wh. 229.

<sup>2</sup> *Newman vs. Rutter*, 8 W. 56.

<sup>3</sup> 1 Barr, 349.

land itself and not the owner of it, is debtor for the public charge; and it is, therefore, immaterial at the moment of sale what may be the state of the ownership or *how many derivative interests may have been carved out of it*. With this the public has no concern; they are sold with the land just as a remainder would be sold with a particular estate," and he adds, "to say the owner may charge his land to the extent of its value in the hands of a purchaser, is to say he may exempt it from taxation altogether. Thus encumbered it could not be sold. Necessity requires that the public duty should be held paramount to all others; and if a judicial sale shall clear the title of incumbrances, there is a more urgent reason that a treasurer's sale have the same effect." This *reasoning* as to the *public duty* would seem to apply equally to land subjected to a ground rent, as the owner may convey, reserving a rent to its entire value, a rack rent, and thus by rendering the land of no value above the rent, equally "exempt it from taxation altogether." It would seem no answer to say that the ground rent would be taxed in its stead, because it may be replied, so may the mortgage, and if this is a reason for exempting the land in the one case it is equally so in the other. Nor should a question like this be affected by the accident of the legislature having or not having exercised the right of taxation in reference to the one or the other of these two species of property.

But the law makes a distinction between *estates* and *liens*; and as laid down in another case,<sup>1</sup> by the same learned judge, "a judicial sale extinguishes but liens and not estates." The same effect is attributed, in *Fager vs. Campbell* and *Irwin vs. Bank of the United States*, to a treasurer's sale; and upon this distinction the ground rent is saved in the one case and the mortgage divested in the other.<sup>2</sup>

That a judicial sale does not extinguish estates, cannot be taken as an universal proposition, but as applicable only to sales under a

<sup>1</sup> *Catlin vs. Robinson*, 2 W. 378.

<sup>2</sup> The 4th and 5th sections of the act of January 23d, 1849, (Pamph. Laws, 686, and see also *Perry vs. Brinton*, 1 Harris, 202,) protect ground rents, and a certain class of mortgages in the city and county of Philadelphia, upon a sale of the land for non payment of taxes, &c. assessed thereon.

subsequent lien, for it can scarcely be questioned that a judicial sale under a prior lien divests a ground rent, as well as all other estates, created subsequently to the lien. If otherwise, by the creation of a ground rent to the entire value of the land, a prior incumbrance may be rendered valueless.

In their nature ground rents are perpetual, being reserved to the grantor of the land and his heirs; and being simply an annual sum reserved, there is no right in the grantee, or those claiming under him, to extinguish the rent by the payment of a sum of money in gross. There is, however, almost invariably, a privilege stipulated for in the deed of extinguishing the rent by the payment of a certain sum, within a certain time; in default of which, the rent becomes irredeemable unless at the option of the holder, and the grantee has no equity, even, to require an extinguishment of the rent on tender of the sum fixed.<sup>1</sup> This sum is usually one of which the rent would be an annual return of six per cent. or as it is termed, 16 $\frac{2}{3}$  years' purchase; that is, a sum to which the annual sum would amount in 16 $\frac{2}{3}$  years.

The Act of Assembly of April 22, 1850, (Pamph. Laws 553, Sec. 21,) was designed to change this feature in ground rents, by rendering all thereafter created redeemable at any time at the pleasure of the terre tenant. We regard this act as something of a curiosity in its way, and, being short, we quote it entire, with the design of exhibiting the loose and clumsy manner in which it is drawn. It runs thus:

“From and after the passage of this act, whenever a deed or other instrument of writing conveying real estate shall be made, wherein shall be contained a reservation of ground rent to become perpetual upon the failure of the purchaser to comply with the conditions therein contained, no such covenant or condition shall be so construed as to make the said ground rent a perpetual incumbrance upon the said real estate; but it shall and may be lawful for the purchaser thereof at any time after the said ground rent shall have fallen due, to pay the full amount of the same, and such payment shall be a complete discharge of such real estate from the incumbrance aforesaid.”

<sup>1</sup> Matter of Shoemaker, 1 B. 19.

It may be remarked of this act in the first place, that it appears to be based upon the assumption that ground rents as reserved are not in their nature *perpetual*, but are to become so only upon failure of the purchaser of the land to comply with certain conditions; whereas, in fact, the reverse is the case; the ground rent as reserved is perpetual, but a right of extinguishment is given the purchaser of the land by paying a certain sum within a time limited. Before the expiration of this time the ground rent is said to be *redeemable*, and afterwards *irredeemable*, not that it has *become perpetual*. But, secondly. The Act treats the ground rent as an *incumbrance* on the land; whereas it is an *estate* and not an *incumbrance*. The *arrearages* are an incumbrance.

*Thirdly.* A ground rent deed, as usually drawn, contains no "covenant or condition" that the rent shall "become perpetual upon the failure of the purchaser to comply with the condition therein contained." As we have already stated, the rent, as reserved, is perpetual, and there is a right to extinguish it given the grantee his heirs and assigns, by payment of a certain sum within a certain time. The act does not even treat the *failure to comply* with the conditions as rendering the ground rent perpetual, which, in a practical point of view, it may perhaps, in some sort be said to do; that is, so far as it puts it past the power of the land owner to extinguish or destroy the rent without the assent of the owner of the rent. But this would be far from an accurate mode of expression.

*Fourthly.* The act gives to the "*purchaser*" the right of extinguishment; and it would appear from the context, as though by this was meant the purchaser named in the ground rent deed. If so, does the right pass to his vendee and those claiming under him?

*Fifthly.* The act gives to the purchaser the right "at any time after the said *ground rent* shall have *fallen due*, to pay the *full amount* of the same," in discharge of the land. Here, by the context, the ground rent mentioned is the ground rent *reserved*, to wit, the *annual sum*, and according to a correct construction of the language of the act, payment of this at any time after it has fallen due shall discharge the land from the incumbrance of the annual sum due,

which scarcely required the aid of the act; and unless this language applies to the annual sum it is appropriate to nothing else, because nothing relating to the ground rent but this has any "full amount," either stated with certainty or capable of being reduced to certainty; there is no *principal* to a ground rent but the annual sum reserved; except this therefore, a ground rent has no "full amount." But the act was undoubtedly intended to enable the owner of the land to extinguish the *estate* in the rent, by paying the gross sum usually agreed upon as the sum upon the payment of which, in a specified time the rent should cease and be extinguished. How has it effected this? When does this gross sum "*fall due*?" We suppose it is *due* when it may be *demand*ed. It is *due* when, according to the terms of the contract the party has *promised to pay it*. And as the deed contains no promise by the grantee to pay it, and it can *never* be demanded, it *never* "falls due." If then, the purchaser has only the right of extinguishment at any time after it has *fallen due*, the right, we apprehend, will prove of little advantage to him.

Upon the whole, the act declares that a supposed covenant or condition which never had an existence, shall not make a ground rent a "perpetual incumbrance" upon the land; and that the purchaser of the land may at any time after an event which can never happen, extinguish the rent, (which in this sense has *no* amount,) by paying its *full* amount.

We suppose the act was not designed to affect a ground rent reserved, where no right of extinguishment is given by the deed, should such a case occur; but that such a rent would be irredeemable.

The act is, of course, prospective only, affecting none but ground rents created from and after its passage; but in a few years, its construction will become of importance in determining the *right to extinguish*; perhaps of much more importance than it now is in determining the value of the rent as an investment.

In a future number, we propose considering the remedies usually provided in ground rent deeds for the recovery of the arrears.