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consequently of opinion, that the rule for a new trial should be made absolute.

PER CURIAM.—Judgment reversed and new trial awarded.

The Trustees of the Quaker Society of Contentnea *v.* William Dickenson. } From Wayne.

By the act of 1796, religious societies or their trustees, have not a general capacity of acquisition, they can only take for the use of the society.

Hence, by a conveyance of slaves to the trustees, for purposes forbidden by the policy of the law, nothing passes, and in an action brought in their name to recover such slaves against a stranger, he may, by parol, show the unlawful purpose in contradiction of the deed.

It seems, that even a party might offer such proof, for, as deeds conclude the parties only when valid, they cannot exclude proof of an unlawful design, which avoids them.

The action was detinue, brought in the name of *Joseph Borden* and fourteen other persons, styling themselves "Trustees of the Religious Society or Congregation of Christians, called Friends or Quakers, of the Contentnea Quarterly Meeting, &c." to recover a negro slave, and was tried before his honor Judge RUFFIN, at April Term, 1826. On the trial, it appeared that in November 1817, one *William Dickenson* the elder, executed a deed, by which he conveyed the negro slave in question and others, "to *Thomas Cox*, *Joseph Borden* and *Francis Mace*, Trustees of the Religious Society and Congregation, usually known by the name of Quakers, &c." to have and to hold to them, Trustees as aforesaid and their successors "*for the use and benefit of, and in trust for the said Religious Society and Congregation, for-*

ever." It was admitted that the persons named in the deed as Trustees, were duly appointed such, according to the act of assembly of 1796, and that the Plaintiffs are their successors in that office or appointment. It was then proved by one *Elijah Coleman*, the subscribing witness to the deed, that the religious principles of the people called Quakers, forbid them to hold to the use of themselves individually, or to the use of the society any persons as slaves beneficially as property, or for purposes of profit—that it was the intent of *Dickenson*, *Cox*, *Borden* and *Mace*, parties to the deed, as well as of the Society, that neither the Trustees nor the Society should have any profitable or beneficial use of the slaves, but that the Trustees as a sort of guardians of the slaves, should hold them in the name of the Society for the benefit of the slaves themselves, they working under the direction of the Trustees and entitled to receive the profits of their labor, after defraying the expenses attending their comfortable maintenance—and to be ultimately emancipated by the Society or Trustees, whenever it could be effected according to the laws of this state. The witness being asked if it was not intended that the slaves might be sent out of the state to be emancipated, answered, that nothing was said by the parties as to such a disposition of them, but he understood it to be the intention that they should remain in North-Carolina until emancipated, and then to choose their own places of residence.

The presiding Judge was of opinion, that the Plaintiffs as Trustees, could take and hold *only* property conveyed and *intended* for the use of the Society, and that a conveyance to the Trustees, expressed on its face to be for the use of the Society, but in fact for the benefit of some other person, was not valid—that the use required, must be one actually *beneficial* to the Society, who could not constitute its Trustees or itself, trustee for third persons.

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and at all events, not for the uses and purposes specified by the witness. The Judge was also of opinion, that evidence of such beneficial use, for the Society, formed a necessary part of the Plaintiffs' case, and though such use was *prima facie* to be inferred from the declaration in the deed, yet if the Jury believed from the testimony of the witness, that no *beneficial* use to the Society was intended, but that the conveyance was made for the other purposes stated by the witness, the Plaintiffs had not a title to the slave and were not entitled to a verdict.

The counsel for the Plaintiff submitting to this opinion of the Court, the Plaintiffs were called, and a motion to set aside the nonsuit having been refused, appealed to this Court.

Gaston, for the Appellants,

The enquiry is in a Court of Law, which cannot examine into the invalidity of trusts, but can only ask whether the Plaintiffs have a legal title.

The amount of the charge is, that a religious society shall not take property which they are not to derive a benefit from, or that it cannot take what it cannot enjoy. The capacity of the corporation must be such as the law gives it; the act of 1796, c. 457, and 1809, c. 70, makes the Trustees mere agents of the Society, the property rests in the Society. The capacity of taking is only limited as to realty. So far then, as a legal capacity in any person to take personal property exists, so far has this Society a right to take.

That the Society did not in fact, derive any benefit from the property, can make no difference, for many things which religious societies do, are not done with a view to profit, and there is no profit in much of the property which they hold.

If the Judge had laid down the rule, that they should only hold such property as they used in their religious worship, perhaps the idea might be correct.

The Judge's opinion was probably founded upon dicta in the books, that corporations cannot hold in trust, (1 *Plowd.* 103). But if they cannot hold in trust, they can hold discharged of the trust. The rule however, is confined to a technical *use*, and was adopted to prevent alienations in mortmain; applies exclusively to land and not at all to personalty. (*Com. Fran. F.* 10, 15, 17.)

But if they can take personalty unlimitedly as an individual, where is the principle which prevents them from receiving it for the benefit of others; and it cannot be contended at this day, that corporations cannot be controlled in Equity.

This however, is a question beside the main one, for that is, whether the corporation had a legal capacity to take. The enquiry whether the trust is good or bad, is proper for a Court of Equity only. By this instrument, the ownership of this negro passed directly to the Society, the Trustees had nothing to do with it except as agents.

The Defendant however, has shown no title, and if the doctrine held by the Court below is correct, the negroes belong to nobody, for *Dickenson*, the grantor, cannot claim them.

The instrument upon its face is valid, and parol evidence cannot be introduced to prove a trust different from that declared upon its face.

If it be said that parol evidence is used to impeach a bond, when it is averred that the consideration is against law, as usury, gaming, &c. Fraud is the ground which is objected to in these cases.

The trust however, is not illegal, for no man is obliged to make a profit of his slaves; if they roam about they may be hired out, and the owner is liable for them civily; but he is not obliged to make a profit out of them.

All the cases in which bills in equity have been filed to set aside devises of slaves for the purpose of emanci-

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pation, and declare a resulting trust in the next of kin proceed upon the ground, that the legal estate is complete.

The charge is a repeal of the act of 1796.

Badger, contra.—The Judge was right in nonsuiting the Plaintiffs, for no title passed by the deed, the property not being intended for the "use of the Society." It is supposed on the other side, that the Society is the *quasi* corporation under the act of 1796; but it is believed by us that the Trustees and not the Society are vested with the corporate rights granted by the act. This is shown by its phrascology—by the 1st section, the Trustees and their successors "are vested with power to purchase and *hold in trust* for the Society," and "to receive gifts, &c. for the *use* and *benefit* of the Society." By the 2d section the Trustees are "to sue and be sued," and by the third, the mode in which the Trustees are to be called to account, is by other persons, to be elected by the society for that purpose. In the two first, is clearly recognized the distinction between the legal estate in the Trustees and the beneficial interest in the Society—the former holding and receiving, to the use of, in trust for or for the benefit of, the latter—provisions inconsistent with immediate corporate rights and a legal estate in the Society—and if these exist, why provide by the last section for the appointment of other persons to call the former Trustees to account?

The case is analogous to that of churchwardens in England, who are the representatives of the congregation as to personalty, while the clergyman is the "*persona ecclesias*" as to the church and the glebe. The former, though not in the fullest sense a corporation, have yet corporate rights as to the goods of the church, and as to them, take in succession, and have a capacity to sue, and the congregation for whose benefit they have these privile-

ges, can call them to account for misconduct or abuse only by appointing for that purpose, others to represent them. (*Com. Dig. Eglise F.* 43—1 *Blac. Com.* 394, 395.)

Whether, however, the capacity to hold, be in the Trustees or the Society, is not deemed material to our argument, which though framed on the supposition of the former, will, it is hoped, be found conclusive against the Plaintiffs in either view.

The Plaintiffs then, were not entitled to recover, because they were not parties to the deed, so nothing passed to them as natural persons, and as Trustees, they cannot claim as successors to the parties thereto, because nothing passed to them in their artificial character as Trustees. They are authorized to purchase, hold and receive, *to the use and for the benefit of the Society*, and for no other use. It is said, that the deed conveys the legal estate to them, and if the trust be liable to any objection, it must be urged in another former. This would be true if the Plaintiffs sued as natural persons, or if they were a corporation vested by law with a general capacity to take; but here they have a certain limited and particular capacity, clearly specified and exactly defined, no other capacity is expressed, and to infer a general capacity from a particular grant would be manifestly unwarranted. Itisnot then a question to be settled in equity, if the trust is good; but the true enquiry is, does the estate pass at law? That depends on whether the Trustees had a capacity to take and by the provisions of the law, that capacity is suspended upon the character of the use. If the use is within the statute, the Trustees take, if not, their capacity being derived solely from the statute, they cannot take at all.

But it is said, shall a religious society be required to make a profit of all their estate or else forfeit it, and if not, where is the limit of the humane and charitable purposes, to which they may apply it? Suppose they should

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choose to support a mission to convert the heathen, surely this purpose, so sacred as a religious duty, is allowable? To this we answer, that no one supposes the Society is required to carry on trade or become lenders of money to make pecuniary gain, nor is this implied in any thing said by the Judge below; but it is contended by us, that the act of assembly being for *religious* societies, and securing property to their own *use and benefit*, the purposes within the act are only religious uses for the benefit of the Society itself—and that the legislature had no view to erect all religious congregations into corporations, for general purposes of charity and benevolence; and though it is difficult & even impossible, to state with clearness and precision, any rule which will at once determine the class to which all supposable cases ought to belong, because of the uncertainty of the boundaries which separate the departments of all moral subjects, yet we can have a rule sufficient to all practical purposes. The support of foreign missions, would be clearly out of the statute, which contemplates property held for "the use or benefit" of religious societies here—not held by the Societies here, for other persons abroad.—Again, a *free* school here, it is conceived would not be one of the uses mentioned in the act, for it is not a *religious* use, however benevolent. The uses intended are, the support of a preacher, the erection of a place of worship and other purposes of a like kind. But however this may be, the use in the present case, is neither religious nor charitable in its nature, nor for the benefit of the Society. The Trustees or the Society (it matters not which) are to employ the slaves, receive the proceeds of their labor, reimburse the expense incurred, and apply the residue for the exclusive benefit of the slaves themselves 'till they can be emancipated. The right of property can give to none more than the profits after paying the charges, and so the slaves are the proprietors

of themselves; the Society but the agents to superintend their labor, and keep their accounts. It is then a case of *substantial* emancipation, under the form of ownership, and comes exactly within the principle of *Haywood* v. *Craven's Ex'rs.* (2 *Car. L. R.* 557) and *Huckaby* v. *Jones,* (2 *Hawks* 120) in which this was held to be, in our state of society impolitic and unlawful. In those cases, the estate in the executors was good, and the trust only unlawful, because they had a general capacity to take—here the whole grant is void, there being no capacity to take, except for one purpose and that not intended. We are asked what becomes of the legal estate if it be not in the Trustees or the Society, the grantor being estopped? It is not conceded by us that the grantor is estopped. If he is, the slaves belong to the Trustees in their natural capacity, or are *bona vacantia* and belong to the state; but here we are not called on to show who is entitled, it is sufficient to show that the Plaintiffs are not.

It is objected that the evidence was inadmissible to show a purpose different from that expressed by the deed, and the rule is referred to "that parol evidence shall not be received to contradict a deed." To this objection there are three answers, each of them conclusive.

1. The rule referred to applies only to the parties to the deed, and those who claim under them, and the notion that strangers who claim nothing under a deed shall be concluded by it, is supposed to be entirely novel and unsupported by any authority. The deed when proved, is evidence that the parties to it said such things as it contains, and it is evidence thus far against all the world; but of the *truth* of the facts recited or supposed thereby, it is not evidence at all, except against parties and privies. If therefore the Judge was guilty of any error at all, it was in holding the recital to be even *prima facie* evidence against the Defendant, as to whom it was *res inter alias acta.*

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2. A party cannot estop himself from showing a fact or purpose unlawful or corrupt to avoid his deed. For the law which forbids the purpose and avoids the deed by which it is to be accomplished, would be untrue to itself if it permitted the deed to be so framed as to preclude the purpose from being shown. To forbid, and then to reject the proof of the matter forbidden, would be to frustrate the very policy which dictated the prohibition. Hence a man cannot by any recital in a bond, preclude himself from showing that the same was founded on a usurious or gaming consideration, or to suppress a prosecution; but to show this, he may, *by parol*, contradict the most solemn acknowledgments in a deed of a just and true consideration. If then the purpose of this conveyance was forbidden by law, no one, either party or stranger can be estopped by it.

3. The evidence was received without objection below, and therefore none can be taken here—for parol evidence to contradict a deed is not in an absolute sense inadmissible, it is always admissible by consent, and when no objection is stated, it is supposed to be heard by consent.

Gaston, in reply.—It is not material to enquire whether the acts of 1796 and 1809, incorporate the Society or the Trustees.

It is however, much more analogous to our institutions that the Society itself should be incorporated, and that the Trustees should be considered as its agents.

Any grant to a vill is an incorporation, as a grant to be free of a toll. (*Com. Fran. F.* 6.)

Frequently these corporations are directed to act through agents, while the whole community is the corporation, (*More.* 582) as in the case of the bank charters in this state.

The acts recognise the Society, it is to elect, the proviso restricting the power of holding lands, is upon

the Society, not upon the Trustees, recoveries made by them enure to the benefit of the Society, who may discharge their Trustees. The whole scope of the acts refers to the Society, all the enactments are for its benefit, and the Trustees are its agents, through whom its corporate will is expressed. But whether the Trustees or the Society is incorporated can make no difference, the question recurs, have the Association power to take property; this is a necessary incident to every corporation; it may be limited, but if no limitations are imposed, they can take to any extent. (1 *Blk.* 475--1 *Co.* 30--*Com. Franchise, F.* 10.)

Those who insist upon the want of capacity, must then prove the reverse of this clear right; no such is shown, nor can any be pointed out. It is said, that it may be inferred from the first section, authorising receipts for the use and benefit of the Society, that none can be received except those for the use and benefit of the Society; if by this is meant that none can be received, except such as the Society has the *dominium utile* in, it is admitted, but this is different from preventing it taking property from which it can derive no *profit*. The Society had the jus utendi, and what right they have, they can dispose of; this however is different from the construction which prevents them from holding property, from which they made no profit, (*Trustees of Phillips Academy* v. *King*, 12 *Mass.* 546.)

In donations to religious Societies, pecuniary emolument is rarely intended, as for instance in a gift to endow a free school.

But it is said, that the purpose for which this conveyance was made, is illegal, and that the law would not be true to itself, if it permitted the deed to stand. But no emancipation is intended, unless it be consistent with the laws—they are to be worked as slaves—governed as slaves—have no right of locomotion—not one violation of the law is intended, or is actually effected by the deed.

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It is a conveyance of slaves *as slaves*, and the only stipulation is, that if it shall be lawful hereafter to free them, they shall be emancipated.

But it is said, that the cases of *Haywood* v. *Craven* and *Huckaby* v. *Jones*, prove this to be illegal; but these cases only establish that where there is no trust declared in a devise, or one so vague as not be inforced; not that the legal estate does not pass, but that a Court of Equity will declare a trust. These devises were for mere *emancipation*—no equitable title or usufructory interest passed.

But where is the legal title? It is said, that it may have passed to the Trustees in their natural capacity, but the contract is, that the property should go to the artificial person, if that contract is ineffectual, it cannot be said that it shall enure to the individuals of the corporation naturally.

It is said, that they may be regarded as *bona vacantia*, this however creates a greater nuisance than any that can be imagined, and is still more liable to the *argumentum ab inconvenienti*.

The whole enquiry was irrelevant—the evidence inadmissible—the deed cannot be impeached, not upon the technical principle of estoppel, but because all persons are precluded from denying that a deed formally made, between persons having capacity, passes the title; and this rule is founded upon fundamental principles of policy as regards property.

But it is said, the consideration is illegal, and that its ill egality may be shown; there is a difference between executed and executory contracts. The conveyance is absolute, and has had its full effect—*at law*, it cannot be impeached, though if its purpose be unlawful, equity will interfere; but a bond is an executory agreement, and if founded on an illegal consideration, *no* Court will give it effect by enforcing its execution.

TAYLOR, Chief-Justice.—The deed of gift executed to the three Trustees of the Friends Association does upon its face, convey the negroes to them for the purposes authorised by the act of 1796, and deciding from the conveyance alone, passes a valid title to them. But as the Defendant was a stranger to the deed, it is competent for him to give parol evidence of the real objects of the deed, and of the trusts it was intended to effect, beyond those expressed, (3 *Term Rep.* 474—8 *Term* 379—*Starkie on Ev. P.* 4, 1051—10 *Johns.* 229.)

Before the passing of the act of 1796, the Society of Friends had no capacity to acquire property as an Association, because they were not incorporated; they could take only in their individual characters, the gift being confined to the very persons in existence when it was made. To enable it to manage its own affairs and to own property for the exclusive use of the Society as a religious association, without the continual necessity of conveying it from one to another, the act of 1796 was passed. A corporation exists but in contemplation of law, and possesses those properties only which the law confers upon it. By the very act of incorporation, and without any special power to that purpose, it is incidental to it to acquire property. But as it is the creature of legislative will, it is competent for the Legislature to limit its capacities and powers, as it may think proper. It may withhold altogether its capacity to acquire property; it may consequently limit and restrain it to definite purposes. It cannot be said of the Trustees of this Society that they have a general power to purchase and hold property, because the act declares that they shall hold it in trust, for the *use* and *benefit* of the Society. If then the case discloses the fact that the Trustees hold this property for an use different from that of the Society, and for the benefit of persons not contemplated by the Legislature when they gave the power, and for objects

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that are not less adverse to the words and spirit of the act, than to the general policy of the law, I think it will follow that the Plaintiffs have no title to recover.

What are the real objects of the donation? The individuals composing this Society believe it to be repugnant to their religious principles to become the owners of slaves, and will not employ their labour to the profit and advantage of themselves, or of the Society. The Trustees were to act as guardians to the slaves, and to hold them for the *benefit* of the slaves themselves, who were to receive the surplus of the profits of their labour for their own emolument, and ultimately to emancipate them, whenever it could be done consistently with the laws of the State.

So far then from the Plaintiffs taking the property for the objects permitted by the act of 1796, it appears to me that nothing but the name is wanting to render it at once a complete emancipation; the Trustees are but nominally the owners, and it is merely colourable to talk of a future emancipation by law, for as none can be set free but for meritorious services, the idea that a collection of them will perform such services, under the construction which those terms in the act of 1777 have uniformly received, is quite chimerical.

It is said that the legislature could not mean that the Society should take no property, but such as it derived a pecuniary benefit from. Certainly that was not their intention; but it evidently was their intention that the property they were allowed to acquire should subserve in some way, the legitimate object of a religious association, which every man can comprehend when stated, though it may be difficult to give a definition that shall include the whole.

A place of worship, of interment, the support of a minister, the means of educating and assisting their poor members, and various other objects which yield no pe-

cuniary profit, we perceive at once to be within the scope of the permission.

But if a sense of religious obligation dictates to any Society the exercise of an enlarged benevolence, which however virtuous and just in the abstract, the policy of the law, founded on the duty of self preservation, has forbidden, it irresistibly follows that a transfer of property so directed, must be void.

Nor do I feel the force of the remark that the property belongs to the Society, that they may make profit out of it if they choose, or sell it or dispose of it in any way that another owner might. This is to presume that a Society not less remarkable for the purity of its principles, than for an unshaken steadfastness in maintaining them, will at once degenerate from their long tried morality. The whole history of the people called Quakers, shows that neither prosperity nor adversity, favour or persecution, or any known vicissitude of their condition, has ever interrupted the even tenor of their ways. I firmly believe, indeed I consider it morally certain, that if the Plaintiffs recover, this property will be disposed of in the manner described by the witness, and in no other.

It is true that an individual may purchase a slave from gratitude or affection, and afford him such indulgencies as to preclude all notion of profit. The right of acquiring property and of disposing of it in any way consistently with law, is one of the primary rights which every member of society enjoys. But when the law invests individuals or Societies with a political character and personality, entirely distinct from their natural capacity, it may also restrain them in the acquisition or uses of property. Our law allows the Trustees to hold them for the benefit of the Society, whereas in truth, they hold them for the benefit of the slaves themselves, and only in the name of the Society.

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I cannot distinguish this case, in principle, from the former decisions wherein trusts for the emancipation of slaves, have been held void in Equity, on the ground that the law had forbidden such attempts, except in the manner prescribed by the act of 1777. There, resort was necessarily had to equity, because the legal title passed to the executors; but here, as it is justly remarked by the Judge who tried the cause, evidence of the beneficial use for the Society, forms a necessary part of the Plaintiffs title, of which, though the deed is *prima facie* evidence, it is not conclusive.

Upon the whole, my opinion is, that the Plaintiffs have no legal title, and although the province of this Court is to administer the law as they find it, without any regard to consequences, yet my judgment is in some degree fortified by the belief that a contrary decision would produce most, if not all, of the ill effects which the Legislature sought to avoid by the act of 1777.

If that law could be eluded by transferring slaves to this Society, there is no foreseeing to what extent the mischief might be carried. Numerous collections of slaves, having nothing but the name, and working for their own benefit, in the view and under the continual observation of others who are compelled to labour for their owners, would naturally excite in the latter, discontent with their condition, encourage idleness and disobedience, and lead possibly in the course of human events to the most calamitous of all contests, a *bellum servile*.

HENDERSON, Judge.—What may be the effect of the deed of *William Dickenson* to *Thomas Cox*, and the other original donees, viewing them merely as individual or natural persons, we are not called on to say. The form of the action, or rather the party Plaintiffs necessarily brings into discussion its validity under the act of 1796,

authorising religious societies to purchase and hold property; for without the aid of that or some other act creating them a corporate or artificial body, the present Plaintiffs cannot sustain this action, there being no privity or connection between some of the present Plaintiffs and the original grantees. By that act religious societies are not made corporate bodies with unlimited and unqualified powers of acquisition, for were that the case, it is admitted that the use or trust upon which they held their acquisition, would not affect their legal title. If the use or trust was vague or unlawful, it would be a reason why it should result to some other person or for some other purpose, but such modification of the *use* would not affect the legal ownership; because in this case the Trustees having a general and unqualified capacity to acquire property, as individuals or natural persons, the use or trusts upon which such acquisitions were held with such bodies, as with natural persons, would not affect their estates at law. The act of 1796, however, does not confer a general and unqualified power of acquisition, but only a limited and restricted one, to-wit, for the use and benefit of the Society; it is therefore the use which gives to the transaction its artificial character, by bringing to its aid the act of 1796, if such use is for the religious Society. The Society (either itself or its Trustees, which is immaterial as regards this question) are invested with corporate or artificial qualities, qualities commensurate with the object in view, but if the use or trust is not for themselves as a religious Society, but for others, they can derive no aid from the act. They must then rest on their rights as individuals or natural persons, and it would seem to follow as a most necessary consequence, if this *use* is *forbidden by law*, if it is contrary to the policy of the state, that the transaction can derive no aid from *an act of the Legislature by which the use, and the use only, gives character and vali-*

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dity to the deed. In saying that it is the use which gives character and validity to the deed, I mean not to assume the power of examining into the question, whether the use is actually beneficial to the religious Society or not, it is sufficient that they as a religious Society think it so; of this they are the sole and exclusive judges; but when the question is presented to me, it is my duty to see that such use does not violate the laws or policy of the state, and I think in this case, the use offered to be shown on the part of the Defendant, from an examination into which the Plaintiffs shrunk, and which must therefore (if the testimony is admissible) be taken as true, is forbidden by law, is contrary to the policy and hostile to the best interests of the state. It is contrary to law to permit slaves to hire their own time, the pernicious effect this must produce on our slaves is too obvious to require illustration; neither is any person permitted to emancipate his slave by his own act, it requires the sanction of the constituted authorities of the state to effect it, and no one I think, can for a moment, doubt the policy of these acts. I must also confess, after a careful examination of the case, that I can discover no difference in effect, so far as regards the evil example to our slaves, between hiring to them their own time, and placing them on farms, and giving to them what they make after deducting the expenses of supporting them; and no great difference between emancipating them, and holding them in the above mentioned manner, until they can be emancipated. It must produce dissatisfaction and a restless spirit among others, the very evils the Legislature designed to prevent. There can be nothing, I think, in the objection that the uses and purposes for which this Society hold these slaves, not being expressed in the deed, averments supported by parol evidence are inconsistent with it, and therefore inadmissible to show what those uses are; in the first place, they are not inconsistent with

the deed, the deed being general. But even between the parties to a deed any averment may be made, and of course proof received, to show its nullity. When strangers are concerned, and how this Defendant claims does not appear, consequently we must view him as a stranger, such averments are very clearly admissible. The recitals in a deed can bind the parties only, when it is taken as valid, but in endeavoring to show that it is void, its recitals and affirmations may be disproved by any one, either party or stranger, otherwise the parties by false recitals, can protect the most unlawful contracts from scrutiny.

HALL, Judge, *dissentiente*.—The act of 1796, ch. 457, authorises religious societies and congregations to appoint Trustees, who may purchase lands and receive donations for their use and benefit, and after such purchase or donation, the Society is declared to possess the absolute estate of all such property. The principal and only qualification required by the act, is that the Society shall be a religious one.

But it is stated in this case, that it is contrary to the religious principles of the Association of Friends, to hold slaves to their own use, and it is argued, that on that account the conveyance is void, under which they claim the slave in question.

I do not understand from that statement that they are averse from holding a title to slaves, or from being considered as having a right to the use of them, but that in point of law they may have the legal title, and a right to the use, but they claim the right of disposing of that use in any way they may think proper, provided that disposition does not conflict with the laws of the land.

That they may gratify their thirst for gain with it, or render it subservient to the gratification of any other desire not prohibited by law—that the enjoyment of the use

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consists in the freedom of disposing of it—that it is optional with them to build churches, employ preachers or give it away in charity in any other way their consciences approve of.

Preachers, individually, have the capacity to purchase slaves, and when they become owners of them are, like other citizens, subject to the laws made for their government, and when they form themselves into religious Societies, the Legislature confers upon them the capacity to purchase, the transfer of power is general. The Legislature have made no exceptions on account of religious tenets, and it appears to me not to be the province of this Court to discriminate and make any. As to their liberation of them, for which purpose it is said they purchase them, it can be effected only in the way pointed out by law, and when it can be effected in that way they have a right in common with other citizens, to avail themselves of it. If they permit them to hire their own time or otherwise mismanage them, they are like other citizens, amenable to the law for such conduct. It is not for this Court, by legal anticipation, to apply a preventive remedy.

If we take a step into the moral world and contemplate the unbiassed principles of our nature, we will discover for the exercise of our discretion a wide range between humanity and cruelty, and we might not find fault with those who mingled with their religion the dictates of the one and carefully abstained from the exercise of the other.

But if on account of our unfortunate connection with slavery, these sentiments tend to a mistaken policy, if self preservation impels us to a different and contrary course, that *course* should be pointed out by the Legislature; the mischief and the remedy are both with them. If the act of 1796 hath produced the one, they can, by some other act furnish the other.

Therefore the best consideration I have been able to give this case, results in a conviction that the rule for a new trial should be made absolute.

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PER CURIAM. Judgment affirmed.

Den on demise of Wm. Bufferlow
v.
Richard Newsom. } From Northampton.

A widow remaining in possession as widow, of lands occupied by her husband in his life, is bound by an estoppel, which bound her husband.

A jury is bound by an estoppel, and the Court will disregard a finding contrary thereto, except where the party entitled to the estoppel has waived it by mispleading.

EJECTMENT, tried before RUFFIN, Judge, when a verdict was taken subject to the opinion of the Court upon the following case:

One *Jesse Webb* being seised, and in the actual possession of the premises in dispute, on the 16th March, 1817, conveyed to one *John D. Amis* in fee *upon trust*, to sell and pay a debt due to one *William Amis*, if *Webb* should fail to pay. On the 30th October, 1820, *Webb* having fully paid the debt, *W. Amis* executed to him a release of the same, and also of all claim to the land. No sale or conveyance was ever made by *J. D. Amis*, and *Webb* continuing in possession with the consent of both *William* and *John*, on the 30th September, 1820, sold and conveyed to the lessor of the Plaintiff in fee simple, with general warranty. After this sale and conveyance, *Webb* still continued in possession of the land by leave of the lessor of the Plaintiff, (though without any formal or express lease for any particular time) and cultivated it until March, 1821, when he died. *Mary*, the widow of