

SUPREME COURT OF GEORGIA

Wood v. McGuire

15 Ga. 202 (1854) · Decided February 15, 1854

SUMMARY

The court addresses what constitutes possession of real estate beyond possession implied by documentary title or enclosure, requiring residence, cultivation, or positive, definite, and notorious acts of ownership. It also discusses the effect of admissions by a predecessor in title and excludes hearsay testimony regarding an alleged sale. The court further holds that a testamentary bequest to the children of Milly McGuire vested only in children alive at the testator's death, requiring a new trial because some plaintiffs were not then living.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Starnes, J.
JURISDICTION	Georgia
DECIDED	February 15, 1854
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ejectment judgment was entered for the plaintiffs below. The defendants excepted to evidentiary rulings and the trial court's possession instruction, and to the refusal to grant a new trial.
STANDARD OF REVIEW	The court reviewed the trial court's evidentiary rulings, jury instructions, and refusal to grant a new trial for legal error.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Wood v. McGuire

TOPICS

- ejectment
- adverse possession
- hearsay
- evidence
- real estate

PRACTICE AREAS

- real estate
- ejectment
- evidence
- wills and estates

QUESTIONS PRESENTED

1. What acts are sufficient to constitute possession of real estate when possession is not implied from documentary title and the land is not enclosed?
2. Whether a successor in title is bound by admissions made by a predecessor while the predecessor held title.
3. Whether testimony that a witness understood that the claimant had sold the land was inadmissible hearsay.
4. Whether a devise to “Milly McGuire's children, their heirs and assigns, forever” vested title in children born after the testator's death.

HOLDINGS

1. Possession must consist of residence on the land by the claimant, servants, or agents accompanied by acts of ownership; cultivation of part of the land accompanied by acts of ownership over the remainder; or positive, definite, and notorious acts of ownership demonstrating the character and extent of the claim. Mere residence near the land and a generally recognized claim, without acts or indicia of ownership, is insufficient.
2. A party deriving title mediately or immediately from another is bound by admissions made against the title by that predecessor while the predecessor held title. The admissions were nevertheless not properly usable here because the record did not show that the defendants derived title through McGuire.
3. Testimony that a witness understood that the claimant had sold the land was hearsay and was erroneously admitted.
4. A devise to “Milly McGuire's children, their heirs and assigns, forever” vested the property in the children who were in esse at the testator's death; the four plaintiffs born after the testator's death were not entitled to recover.

KEY QUOTATIONS

“A residence in the vicinity of the land, merely, and a claim to it—though such claim be generally recognized, and spoken of in the neighborhood, and affirmed by all the vicinage—unaccompanied by any of the acts and indicia of ownership above mentioned, is insufficient to constitute possession.” (202)

“It was also error in the Court, to admit what the witness, Abner Roby said, as to his having “understood that he (McGuire) had sold it (the land) to Calhoun”. This, of course, was hearsay testimony.” (205)

FACTUAL BACKGROUND

The plaintiffs claimed title to land under Thomas Rainey's devise to “Milly McGuire's children, their heirs and assigns forever.” Lewis McGuire had possessed the land briefly and partially cleared a small portion, and evidence was admitted concerning his statement that he held for his children. The defendants introduced a state grant to John S. Roberts and a deed from Roberts to Samuel Farmer. A witness was also allowed to testify that he understood McGuire had sold the land to Calhoun; four of the plaintiffs were born after Rainey's death.

PROCEDURAL HISTORY

The plaintiffs claimed land under a devise to Milly McGuire's children. The defendants relied on a state grant and subsequent deed. After a verdict for the plaintiffs, the trial court denied the defendants' motion for a new trial. The Supreme Court of Georgia held that several rulings were erroneous and that four plaintiffs born after the testator's death were not entitled to recover.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

A new trial was required. The court stated that it was unnecessary to address the grounds based on newly discovered testimony because the case was being remanded on the other errors.

CASES CITED

- James v. Richardson, 1 Vent. 334; 2 Vent. 311
- Burchet v. Dundant
- Swinton v. Legure, 2 McCord Ch. R. 440
- Jenkins v. Freyer, 4 Paige 47
- Simms v. Garrett, 1 Dev. & Batt. 393

OPINION

Wood v. McGuire

15 Ga. 202

STARNES, J.

By the Court. Starnes, J. delivering the opinion. [1.] In this case, the question was raised, in relation to real estate, as to what constitutes possession, other than that which is implied from documentary title, or consists of inclosure. We hold, that such possession must be constituted, either by 'residence on the land in person, or by servants, or agents, accompanied with the exercise of ownership; or by cultivation ■ of a portion of the land, accompanied by acts of ownership over the balance; or it must consist of acts of ownership, “positive, definite and notorious”, such as a continued user of 'the land, by going upon it and felling trees, cutting timber from it, and other such acts as serve to show the character and ex'tent of the claim. A residence in the vicinity of the land, merely, and a claim to it—though such claim be generally re- ■ cognized, and spoken of in the neighborhood, and affirmed by ' ; all the vicinage—unaccompanied by any of the acts and indi ■ ciaof ownership above mentioned, is insufficient to constitute 'possession. [2.] A party, deriving title from another, mediately or immediately, is bound by admissions made against that title, by 'the latter, while the title is in him. In this point of view, it is insisted, that the admissions of Lewis McGuire, to the effect, that he held this land, not in his own right, but for his chil- ■ dren, was proper testimony for the plaintiffs; and the defend- : ants should be concluded by it,

inasmuch as they derive title through Calhoun and Gray, from McGuire. The record does not support this position. We have not been able to find the • evidence there, that the defendants are, by title, in any way ■ connected with McGuire. If the fact be so, it has been omitted. But by the record, we must decide the point; and that shows the admissions of McGuire's sayings, as to his title to :have been erroneous.

*205£3.] It was also error in the Court, to admit what the witness, Abner Roby said, as to his having “ understood that he (McGuire) had sold it (the land) to Calhoun”. This, of course, was hearsay testimony.

£4.] This bequest of Thomas Rainey, through which the plaintiff derives title to the land, was “ to Milly McGuire's children, their heirs and assigns, forever”. The effect of such ;a bequest, is to vest the property conveyed, in such of the children contemplated, as maybe in esse at the death of the testator. *James vs. Richardson*, (1 Vent. 334. 2 Vent. 311.)— *Burchet vs. Duntant*. *Swinton vs. Legure*, (2 McCord Ch. R. 440.) *Jenkins vs. Freyer*, (4 Paige, 47.) *Simms vs. Garrett*, (1 Dev. & Batt. 393.) But from this record, it appears that four of the plaintiffs were not in life, at the testator's death. They were, consequently, not entitled to recover. The defendants, therefore, should have had a new trial, on this ground. As the case goes back on other points, it is unnecessary to notice the grounds of motion for new trial, on account of newly discovered testimony.