

SUPREME COURT OF GEORGIA

Wood v. McGuire

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

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 bo 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 McGuird'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. Dundant. 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.