

Patton v. Easton.

applies to personal penalties ; and it is unnecessary to repeat it. The court are clearly of opinion, that the right of the collector to forfeitures *in rem* attaches on seizure, and to personal penalties on suits brought, and in each case it is ascertained and consummated by the judgment ; and it is wholly immaterial, whether the collector die before or after the judgment. And <sup>\*475]</sup> they are further <sup>\*of</sup> opinion, that the case of the surveyor is not, in this respect, distinguishable, in any manner, from that of the collector. They are, therefore, of opinion, that the representatives of the deceased collector and surveyor, and not the present incumbents in office, are entitled to the distributive shares of the moiety of the money now in the registry of the circuit court.

The next question is, as to the proportions in which this moiety is to be divided between the representatives of the collector and surveyor. Whatever may have been the practice in the district of Petersburg, the words of the act admit of no reasonable doubt. The moiety is to be divided in equal proportions between the collector, naval officer and surveyor, or between such of the said officers as there may be in the district. There was no naval officer in the district of Petersburg, and consequently, the division must be, in equal proportions, between the collector and surveyor.

It is the unanimous opinion of this court, that it be certified to the circuit court, that it is the opinion of this court :

1st. In the case of the United States against Joseph Jones and others, that the moiety of the money now remaining in the custody of the circuit court, in the proceedings in the case of the United States, appellants, against Joseph Jones and others, mentioned, should be paid to the said Joseph Jones, collector of the district of Petersburg, to be, by him, divided in equal proportions between Thomas Shore, as he is executor of the last will and <sup>\*476]</sup> testament of <sup>\*John</sup> Shore, deceased, and Reuben M. Gillian, as he is administrator of the goods and effects of Andrew Tarbone, deceased.

2d. In the case of Thomas Shore and another against Joseph Jones and others, that the representative of the late surveyor, in right of his intestate, was entitled to receive one moiety of that portion of the penalty in the proceedings mentioned, which is by law to be distributed among the several revenue officers of the district wherein the penalty was incurred.

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PATTON's Lessee v. EASTON.

*Statute of limitations.*

Under the act of the legislature of Tennessee, passed in 1797, to explain an act of the legislature of North Carolina, of 1715, a possession of seven years is a bar, only when held under a grant, or a deed founded on a grant.

The act of assembly vesting lands in the trustees of the town of Nashville, is a grant of those lands, and when the defendant showed no title under the trustees, nor under any other grant, his possession of seven years was held insufficient to protect his title, or bar that of the plaintiff, under a conveyance from the trustees.

ERROR to the Circuit Court for the district of West Tennessee. This was an ejectment for one moiety of a lot of land lying in Nashville.

The cause was argued at February term 1815, by *Humphries* and <sup>\*477]</sup> <sup>\*Jones</sup>, for the plaintiff in error, and by *P. B. Key*, and *Swann*, for the defendant, and was continued for advisement to the present term.

Patton v. Easton.

March 21st, 1816. MARSHALL, Ch. J., delivered the opinion of the court.—The legislature of North Carolina, while Tennessee was a part of that state, passed an act establishing the town of Nashville, and vesting 200 acres of land in trustees, to be laid off in lots, and sold and conveyed in the manner prescribed by the act. On the 1st of July 1784, subsequent to the passage of the act establishing the town, the trustees executed a deed, regularly conveying the lot, for a moiety of which this suit was brought, to Abednigo Lewellen. On the 1st of April 1810, Shadrack Lewellen, heir-at-law of Abednigo, who had then attained his full age of twenty-one years, for seven years and upwards, executed a deed conveying the land in controversy to Francis May; after which, and previous to the institution of this suit, Francis May conveyed the same land to the lessor of the plaintiff.

The defendant produced a deed, dated the 2d of February 1793, executed by a certain Josiah Love, and purporting to convey the land in controversy to William T. Lewis. It appeared in evidence, that Lewis had purchased the land fairly, and paid a valuable consideration for it, and that at the time, no person was in possession of it. Immediately after this conveyance, Lewis entered into, and took full possession of, the premises, made valuable improvements thereon, and continued so possessed, until the 14th of February \*1810, when he sold and conveyed the same to William Easton, [\*478 the defendant, who entered into and took possession, and continued peaceably possessed thereof, until the 12th of November 1810, when this suit was instituted.

Upon this testimony, the defendant's counsel moved the court to instruct the jury, that the defendant was protected in his possession of the premises, by the laws of the land, and that by virtue of the said laws, the plaintiff was barred from recovering the said parcel of ground and premises. On this question, the judges were divided in opinion, which question and division have been certified to this court, as prescribed by law.

The evidence is not so stated on the record, as to present any point for the consideration of this court, other than the question whether a possession of seven years is, in this case, a bar to the plaintiff's action. This question depends on the construction of an act of the legislature of Tennessee, passed in the year 1797, to explain an act of the legislature of North Carolina, passed in the year 1715.

The act of 1715, after affirming, in the first and second sections, certain irregular deeds, previously made, under which possession had been held for seven years, enacts, in the third section, "that no person or persons, or their heirs, which hereafter shall have any right or title to any lands, tenements or hereditaments, shall thereunto enter or make claim, but within seven years after his, her or their right or title shall descend or accrue; and in \*default thereof, such person or persons so not entering or making [\*479 default, shall be utterly excluded and disabled from any entry or claim thereafter to be made." The fourth section contains the usual savings in favor of infants, &c., who are authorized within three years after their disabilities shall cease, "to commence his or her suit, or make his or her entry." Persons beyond sea are allowed eight years after their return; "but that all possessions held without suing such claim as aforesaid, shall be a perpetual bar against all and all manner of persons whatever, that the expectation of heirs may not, in a short time, leave much land unpossessed,

Patton v. Easton.

and titles so perplexed that no man will know from whom to take or buy land."

The judges and lawyers of the state of North Carolina have been much divided on the construction of this act ; some maintaining, that like other acts of limitation, it protects mere naked possession ; others, that the first and second sections (which are retrospective) have such an influence on the third and fourth (which are prospective), as to limit their operation to a possession acquired and held by color of title. This court is relieved from an investigation of these doubts, by a case decided in the supreme court of North Carolina, in which it was finally determined that the act of 1715 afforded protection to those only who held by color of title. This contest was maintained as strenuously in Tennessee, after its separation from North Carolina, as in the parent state.

Anterior to the decision of the supreme court of North Carolina, which <sup>\*480]</sup> has been mentioned, "the legislature passed an act to settle "the true construction of the existing laws respecting seven years' possession," in which it is enacted, "that in all cases, wherever any person or persons, shall have had seven years' peaceable possession of any land, by virtue of a grant, or deed of conveyance founded upon a grant, and no legal claim, by suit in law, by such, set up to said land, within the above term, that then, and in that case, the person or persons, so holding possession as aforesaid, shall be entitled to hold possession, in preference to all other claimants, such quantity of land as shall be specified in his, her or their said grant or deed of conveyance, founded on a grant as aforesaid." The act then proceeds to bar the claim of those who shall neglect, for the term of seven years, to avail themselves of any title they may have.

As not unfrequently happens, this explanatory law generated as many doubts as the law it was intended to explain. On the one part, it was contended, that being designed for the sole purpose of removing all uncertainty respecting the construction of the act of 1715, its provisions ought to be limited to its avowed object, and a doubt had never existed, whether it was necessary for a person in possession to show more than a color of title, a deed, acquired in good faith, in order to protect himself under that act ; so, nothing further ought to be required, in order to enable him to avail himself of the act of 1797. That if it should be necessary to trace a title up to a grant, the act of 1797, instead of quieting possession, would, in process of <sup>\*481]</sup> time, strip a very long possession of that protecting <sup>\*quality</sup> which the policy of all other countries bestowed upon it ; that the act of 1797 was obviously drawn with so much carelessness as, in some of its parts, to exclude the possibility of a literal construction ; and for this reason, a more liberal construction would be admissible, in order to effect its intent. It was, therefore, insisted, not to be necessary for the defendant, holding possession under a *bona fide* conveyance of lands which had been actually granted, to deduce his title from the grant ; but that it was sufficient, to show that the land had been granted, and that he held a peaceable possession of seven years under a deed. On the other part, it was contended, that, on this point, there is no ambiguity in the words of the act. The seven years' possession, to be available, must be "by virtue of a grant, or of a deed founded on a grant." It is as essential that the deed should be founded on a grant, as that a deed should exist. A possession of seven years does no

## Ross v. Reed.

more, in the one case than in the other, bar a legal title. The words of the act being perfectly clear; they must be understood in their natural sense. When confined to different deeds, founded on the same patent, or to deeds founded on different patents, for the same land, although some cases of fair possession may be excluded from their operation, yet they will apply to the great mass of cases arising in the country.

This question, too, has, at length, been decided in the supreme court of the state. Subsequent to the division of opinion on this question, in the circuit court, two cases have been decided in the supreme \*court for the state of Tennessee, which have settled the construction of the act of 1797. It has been decided, that a possession of seven years is a bar only when held "under a grant, or a deed founded on a grant." The deed must be connected with the grant. This court concurs in that opinion. A deed cannot be "founded on a grant" which gives a title not derived in law or equity from that grant; and the words founded on a grant, are too important to be discarded. The act of assembly vesting lands in the trustees of the town of Nashville, is a grant of those lands, and as the defendant shows no title under the trustees, nor under any other grant, his possession of seven years cannot protect his title, nor bar that of the plaintiff. And this is to be certified to the circuit court for the district of West Tennessee.

## Certificate for the plaintiff.

## Ross and MORRISON v. REED.

*Land-law of Tennessee.*

Where the plaintiff in ejectment claimed title to lands in the state of Tennessee, under a grant from said state, dated the 26th of April 1809, founded on an entry taken in the entry-taker's office, of Washington county, dated the 2d of January 1779, in the name of J. McDowell, on which a warrant issued on the 17th of May 1779, to the plaintiff, as the assignee of J. McDowell, and the defendants claimed under a grant from the state of North Carolina, dated the 9th of August 1787, it was determined, that the prior entry might be attached to a junior grant, so as to overreach an elder grant, and that a survey having been made, and a grant issued upon McDowell's entry, in the name of the plaintiff, calling him assignee of McDowell, was *prima facie* evidence that the entry was the plaintiff's property; and that a warrant is sufficiently certain to be sustained, if the objects called for are identified by the testimony, or unless the calls would equally well suit more than one place.

ERROR to the Circuit Court for the district of East Tennessee. The defendant in error, who was plaintiff in the court below, claimed title under a grant from the state of Tennessee, bearing date the 26th day of April 1809, founded on an entry made in the entry-taker's office of Washington county, No. 975, dated on the 2d day of January 1779, in the name of John McDowell, for 500 acres of land, on which a warrant issued on the 17th day of May 1779. The defendants in the court below, now plaintiffs in error, claim under a grant from the state of North Carolina to John Henderson, dated the 9th of August 1787, and a deed of conveyance from John Henderson to the defendant, Ross, duly executed and registered. Morrison held as tenant under Ross.

At the trial of the cause, a bill of exceptions was taken by the defendants, in which was stated a transcript taken from the book procured from the office of the secretary of state of the United States, which contains