

Shearman v. Irvine.

riety of considerations have their influence. In the case before the court, the opinion of the majority is, that the sentence of the circuit court ought to be affirmed. This opinion, however, is made up on different grounds. Two of the judges are of opinion, that the award was fairly entered into, and although both parties might be mistaken with respect to the obligation created by the law of Delaware, yet there is no reason to suppose any imposition on either part; nor is there any other ground, on which the award can be impeached or set aside. Two other judges, who do not think the award obligatory, view it as the opinion of fair and intelligent men, on the spot, of the real merit of the salvors, and connecting it with the testimony in the cause, are in favor of the salvage which has been awarded, and which has been allowed by the sentences of the district and circuit courts. Three judges are of opinion that the award is of no validity, and ought to have no influence. They think the conduct of the salvors, in taking the goods out of the possession of the revenue officer, though by legal process, is improper, and that the salvage allowed is too great. They acquiesce, however, cheerfully in the opinion of the majority of the court, and express their dissent from that opinion, solely for the purpose of preventing this sentence from having more than its due influence on future cases of salvage.

The sentence of the circuit court is affirmed, without costs.

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Statute of limitations.

The act of limitations of Georgia does not require an entry into lands within seven years after the title accrued, unless there be some adversary possession or title, to be defeated by such entry.

ERROR to the Circuit Court for the district of Georgia, in an action of ejectment, brought (on the 15th of October 1804), by Irvine's Lessee against Shearman, for a tract of land in Camden county, in the state of Georgia.

The defendant below took a bill of exceptions to the refusal of the court to nonsuit the plaintiff on the trial, because he had not proved "an entry within seven years after the title of the grantees accrued, or any entry by either of the heirs or persons claiming under the grantees, within seven years after their titles respectively accrued."

The lessor of the plaintiff had produced in evidence two grants from the province of Georgia, in 1766, to Alexander Baillie, under whom he claimed title by descent, and whose heir-at-law he had proved himself to be. There was no evidence of title, or even of adverse possession, on the part of the defendant, before the bringing of the suit, other than the averment of ouster in the declaration, which was laid on the 10th of September 1804; nor any evidence of title out of the lessor of the plaintiff.

In support of his motion for a nonsuit, the defendant relied on the act of limitations of Georgia, passed in the year 1767, by which it is enacted, "That all writs of *formedon* in *descender*, *remainder* and *reverter* of any lands, &c., or any other writ, suit or action whatsoever, hereafter to be sued or brought, by occasion or means of any title heretofore accrued, happened or fallen, or which may hereafter descend, happen or fall, shall be sued or

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taken within seven years next after the passing of this act, or after the
 *368] title and cause of action shall or *may descend or accrue to the same,
 and at no time after the said seven years. And that no person or
 persons that now hath, or have any right or title of entry into any lands,
 &c., shall, at any time hereafter, make any entry, but within seven years
 next after the passing of this act, or after his or their right or title shall or
 may descend or accrue to the same, and in default thereof, such persons so
 not entering, and their heirs, shall be utterly excluded and disabled from
 such entry after to be made." The verdict and judgment below being
 against the defendant, he sued out his writ of error.

There being no appearance in this court for the plaintiff in error—

P. B. Key, for the defendant in error, opened the record, and prayed an
 affirmance of the judgment. 1. Because, from the facts disclosed, after the
 descent had been cast nearly thirty years, and no adverse possession at any
 time proved, the jury had a right to presume and find an actual entry within
 seven years, if such actual entry was necessary. 2. Because, in this case,
 on the facts disclosed, no entry was necessary. Two things only must
 concur to complete a title. Possession, and the right of property. The
 right of property is proved to be in the plaintiff, as heir of the patentee;
 and possession, by operation of law, accompanies the title, unless the contrary
 is shown; and until it is shown.

If possession is taken by a wrongdoer, and severed from the title (of
 which there is no evidence in this case), then such naked possession, so
 acquired, may be defeated, either by entry of the owner, which is an act
en pais, revesting the possession, and again uniting it with the right; or by
 ejectment, which is an act of law, to recover the possession with damages,
 &c. If a wrongdoer, after taking possession, dies in possession, and a de-
 *369] scent is cast, this, under some circumstances, *changes the title to a
 right of entry, or rather makes an actual entry necessary to give
 effect to the title. There are many cases in which actual entry is necessary
 to re-unite the title with the possession, and for these cases the law of
 Georgia was made. But it cannot apply to a case where the title and the
 possession have not been separated.

That law requires two things: 1st. When the right is changed to a mere
 right of entry, or where an entry is indispensable to complete the title, then
 such entry must be within seven years from the accruing of such right of
 entry. But this does not apply to the case on the record: no disseisin, dis-
 continuance, dissent or adverse possession existed, to make an actual entry
 necessary on the part of the plaintiff. The title and the possession were both
 in him. 2d. The statute gives remedy by ejectment within seven years after
 the cause of action accrued. In this case, no cause of action accrued until
 the 10th of September 1804, when the plaintiff's possession was disturbed.
 So long as it remained undisturbed, he could not bring suit.

MARSHALL, Ch. J.—The error alleged is founded on a construction of the
 act of Georgia, which this court thinks is totally inadmissible. How such
 an opinion could have been entertained, is unaccountable. There is no
 foundation for it.

Judgment affirmed, with costs.