

SPIRES *v.* WILLISON.*Slavery.*

By the act of assembly of Virginia of 1758, no gift of a slave was valid, unless in writing and recorded; but parol evidence may be given of the existence of a deed of gift, to show the nature of the possession which accompanied the deed.<sup>1</sup>

ERROR to the District Court for the district of Kentucky, in an action of detinue for certain slaves.

The plaintiff below, Rebecca Willison, claimed title to the slaves, under her grandmother, and at the trial, offered parol proof, that the grandmother, while Kentucky was a part of Virginia, had given them to her, by a deed, which was lost. To this testimony the defendant below (the plaintiff in error) objected, and prayed the court to instruct the jury, that the said deposition was not legal evidence in this cause; and that, at the time this gift was supposed to be made, no gift of a slave in Virginia was valid, unless made in writing, which writing was afterwards reduced to record; which motion was overruled by the court, and the defendant excepted.

*P. B. Key*, for the plaintiff in error, contended, that as there could be no valid gift of a slave, but by deed in writing and recorded, no parol evidence could be given of the existence of such a deed and of its contents, unless it were first proved, not only that the deed itself was \*lost, but \*399] that it had been duly recorded, and the record also destroyed. The next best evidence to the deed itself is the copy from the record, and unless the loss of this better evidence be proved, an inferior grade of evidence ought not to be admitted. The court ought also to have instructed the jury, that a parol gift of a slave in Virginia was not valid. *Turner v. Turner*, 1 Wash. 139.

*Jones and Harper*, *contra*.—It is not stated in the bill of exceptions, that this was the whole evidence. It was good, so far as it went. If there was evidence, that the deed had been duly recorded, and that the record had been lost, it would have been complete evidence of a title. But it appears by the depositions, that before the expiration of the time limited for the recording of the deed, the plaintiff and the slave removed from the state of Virginia to South Carolina. It was a good deed, at that time, and vested a title in the plaintiff, until the expiration of the time for recording. Before that time arrived, the plaintiff and slave were both out of the jurisdiction of the laws of Virginia.

But by the laws both of Virginia and South Carolina, possession for a certain time gives a good title. Evidence of the deed was evidence of the claim under which the plaintiff held the possession. It was not necessary for the plaintiff to prove a special title, for possession alone was sufficient to support the action.

The prayer to instruct the jury that a parol gift was not valid, was a prayer for an abstract opinion, and in its terms, not applicable to the case. The court merely refused to give the instruction. It might be, because the question was put to the court in such a manner as not to connect it with the case; it might be, that the court thought the question irrelevant.

<sup>1</sup> S. P. Ramsay *v.* Lee, *post*, p. 401.

Ramsay v. Lee.

\**Key*, in reply.—The fact of removal does not appear in the bill of exceptions, and we cannot seek for facts elsewhere.

March 14th, 1808. MARSHALL, Ch. J.—The error assigned consists in both the admission and the operation of the testimony. So far as evidence of the existence of a deed went to show the nature of the possession which accompanied the deed, so far it was admissible; but it was not, in itself, evidence of any title in the plaintiff. There was no error, therefore, in admitting the testimony as to the deed.

But in overruling the prayer to instruct the jury, “that at the time the gift was said to be made, no gift of a slave was valid, unless made in writing, which writing was afterwards reduced to record,” the court below is to be considered as having given an opinion that a parol gift was good. This court is, therefore, of opinion, that the court below erred, in refusing to give the latter part of the instruction prayed by the defendant.

This court gives no opinion, as to the validity of title acquired by possession.

Judgment reversed, and the cause remanded.

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*Title to slaves.*

In Virginia, in 1784, no gift of a slave was valid, unless in writing and recorded, although possession accompanied the gift.

*Quere?* Whether five years' possession is alone a good title, to enable a plaintiff to recover in detinue?

Lee v. Ramsay, 1 Cr. C. C. 436, affirmed.

ERROR to the Circuit Court of the district of Columbia, sitting at Alexandria, in an action of detinue, brought by Lee against Ramsay, for a slave named Frederick.

The material facts appearing by the bill of exceptions taken by the defendant below, were, that Lee claimed, as trustee for Kennedy, under a deed from Wilson, duly acknowledged and recorded, and dated the 1st of December 1804. The question was whether, at the date of that deed, Wilson had a good title to the slave.

Mrs. Gordon being the owner of the slave, in 1784, made a verbal gift of him to the defendant Ramsay, who was then only eight years old, and possession accompanied the gift; the slave remained with the defendant and his mother, Mrs. Ramsay, in the family of Wilson, until the year 1790, when Mrs. Ramsay (claiming the slave as residuary legatee under the will of Mrs. Gordon, under the idea that the parol gift to her son was void), by deed of bargain and sale, conveyed the slave to Wilson, in consideration of five shillings, “and divers other good causes.” Wilson held possession of the slave, under that deed, until the year 1805, when the defendant took him away, and had ever since detained him. The defendant and his mother, and the slave, had continued to live in the family of Wilson, from the year 1784 until the year 1805.

The court below, upon the plaintiff's motion, instructed the jury, “that if