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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*RAMSAY *v.* LEE. [*401

Title to slaves.

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

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

Lee *v.* Ramsay, 1 Cr. C. C. 435, 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 remainded 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

such a verbal gift was made to the defendant of the said slave, and such possession given to him as aforesaid, the gift is void in law, and opposes no bar to the recovery of the plaintiff." The verdict and judgment in the court below being against the defendant, he brought his writ of error.

*402] * *Youngs*, for the plaintiff in error, did not contend, that the verbal gift of a slave could, under the laws of Virginia, give a good title, but that such a gift, and five years' possession, was a good title for a defendant in detinue, but not for a plaintiff, if his possession was wrongfully acquired. He contended, that the defendant's title was confirmed by the operation of the act of assembly of Virginia, passed in 1787.

E. J. Lee, contrà.—If five years' possession is a good title to Ramsay, fifteen years' possession must be a good title in Wilson ; and his possession, being posterior to Ramsay's, must give him a better title. The case of *Turner* v. *Turner*, 1 Wash. 139, is decisive, that such a parol gift cannot be given in evidence.

Youngs, in reply.—The possession of Wilson, in order to create a title, must, at all events, have been adverse : but his possession was the possession of Ramsay. They all lived in the same family. In the case of *Jourdan* v. *Murray*, 3 Call 85, it is decided by the court of appeals in Virginia, that a parol gift of slaves, prior to 1787, may be given in evidence, to prove five years' possession, so as to bar the plaintiff's recovery.

Marshall, Ch. J.,—There is no question, that five years' adverse possession, with or without right, gives a good title.

March 14th, 1808. Marshall, Ch. J., delivered the opinion of the court to the effect following:—The case is the same as that of *Willison* v. *Spiers*,

*403] just decided, except that in this case the court below gave the *instruction which the court in Kentucky ought to have given. The opinion of the court was only that a parol gift to the defendant, accompanied by possession, did not bar the plaintiff's right to recover.

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

Judgment affirmed.

Stead's executors *v.* Course.

Tax-sale.

A collector, selling land for taxes, must act in conformity with the law from which his power is derived; and the purchaser is bound to inquire, whether he has so acted.[1]

It is incumbent on the vendee, to prove the authority to sell.

By the tax laws of Georgia, for 1790 and 1791, the collector was authorized to sell land only on a deficiency of personal estate; and then to sell only so much as was necessary to pay the taxes in arrear.

Under those laws, the sale of a whole tract, when a small part would have been sufficient to pay the taxes, was void.

Error to the Circuit Court for the district of Georgia, as a court of equity.

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[1] In order to support a tax-sale, it must be shown, that the law was strictly complied with. Parker *v.* Rule, 9 Cr. 64; Thatcher *v.* Powell, 6 Wheat. 119; Ronkendorff *v.* Taylor, 4 Pet.