Volume 27 | Issue 1 Article 11

November 1920

Adverse Possession--What Constitutes--Occupancy Under A Parol Gift

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It is submitted that the majority of the Court seem to have failed to appreciate the nature of the problem at hand, and that Mr. Justice Ritz, in his dissenting opinion, sponsors what is apparently the better view. —M. T. V. H.

RECENT CASES.

ADVERSE POSSESSION—WHAT CONSTITUTES—OCCUPANCY UNDER A PAROL GIFT.—An oil and gas company agreed to convey one-half acre of surface land to a school board as soon as the land was measured in metes and bounds. In reliance on such promise the school board entered, built a school house and held possession for fifteen years without receiving the deed as promised. A controversy then arose between the parties as to the rights to the oil and gas under this land. The question was whether such entry and occupancy were adverse so that title to the land and to the oil and gas would be acquired under it. *Held,* No title was acquired. *Bumpus et al* v. *Ohio Cities Gas Co., et al.,* 103 S. E. 62 (W. Va. 1920).

It is well settled authority that where one enters land pursuant to a parol gift and holds exclusive possession, such possession is adverse. *Sumner* v. *Stevens,* 47 Mass. 337; *Schafer* v. *Hauser,* 111 Mich. 622. Virginia is the only state holding such possession subordinate to the owner's title. *Clarke* v. *McClure,* 10 Gratt. 305 (Va). In the principal case there was a promise without consideration and the relation existing between the parties was purely that of donor-donee. In support of its conclusion the West Virginia court cites two cases which hold that possession acquired under an executory contract does not form the basis of adverse possession. *James Sons Co.* v. *Hutchinson,* 79 W. Va. 389, 90 S. E. 1047; *Hudson* v. *Putney,* 14 W. Va. 561. Adverse possession is founded on a claim of ownership. *Schafer* v. *Hauser, supra.* Possession, under an executory contract, however, differs from that under a parol gift. The executory contract shows that the vendee has entered in recognition of the true owner and therefore he cannot hold adversely without some hostile assertion of ownership. *Greeno* v. *Munson,* 9 Vt. 37. But where there is a parol gift of the land, as in the principal case, the donee enters as owner and the donor admits such ownership. Though the court's decision on the question of adverse possession is open to criticism the actual holding in the case may be supported. The school board acquired

the surface land by a claim of right, but they asserted no ownership over the oil and gas that would give them title to it by the runnig of the statutory period. In other words, the conclusion of the court was right had they confined their decision to the oil and gas rights. —W. F. B.

CONSIDERATION—WHAT CONSTITUTES THE CONSIDERATION.—A and B mutually agreed to allow C to receive the dividends on the stock owned by them in the X Co. The X Co. paid dividends to C, in accordance with this agreement, for four years. A then instructed the X Co. to pay no further dividends on his stock to C. The X Co. filed a bill of interpleader to determine to whom the dividends should be paid. *Held,* the dividends on A's stock must be paid to A. *Banner Window Glass Co.* v. *Barriat et al.,* 102 S. E. 726 (W. Va. 1920).

A West Virginia statute gives a party the right to sue on a contract made for his benefit. W. VA. CODE, c. 71, § 2. The question here, then, is whether there was a contract. This depends upon whether there was a consideration for A's promise. A benefit to the promisor, or a detriment to the promisee, is a valuable consideration. See WALD'S POLLOCK, CONTRACTS, 3 ed., 185 n. 1. If the promisee suffers a detriment, it is immaterial whether or not the promisor is benefited. *German* v. *Gilbert,* 83 Mo. App. 411; *Hamer* v. *Sidway,* 124 N. Y. 538, 27 N. E. 256. A detriment consists in giving up some legal right or privilege. *German* v. *Gilbert, supra; Hamer* v. *Sidway, supra; Ballard* v. *Burton,* 64 Vt. 387, 24 Atl. 769; *Bainbridge* v. *Firmstone,* 8 A & E. 743, 112 Eng. Reprint 1019; *Haigh* v. *Brooks,* 10 A. & E. 309, 113 Eng. Reprint 210. Mutual promises are sufficient consideration for one another. *Buckingham* v. *Ludlum,* 40 N. J. Eq. 422; *Phillips* v. *Preston,* 5 How. 278 (U. S.); *Walke* v. *McGehee,* 11 Ala. 273. See WALD''S POLLOCK, CONTRACTS, 3 ed., 201. The promise, and not the performanec, is the consideration. *Walke* v. *McGehee, supra; Buckingham* v. *Ludlum, supra; United & Globe Rubber Mfg. Cos.* v. *Conrad et al.,* 80 N. J. L. 286, 78 Atl. 203. In the principal case it is difficult to see why B's promise was not sufficient consideration. B was not obliged to enter into this agreement with A, nor to make A the promise he did. If B had promised to pay and had paid his share of the dividends to A, it would be clear that B had suffered a legal detriment. He suffers the