

ALETHA THORNE, FRANCIS O. THORNE, JR.,  
and MARY DENT, only legal surviving heirs of FRAN-  
CIS O. THORNE, SR., deceased, of Harper City, Pe-  
titioners, v. OTILLIA D. B. THOMSON, Respondent.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,  
MARYLAND COUNTY.

Decided May 15, 1930.

1. The jurisdiction of a court of equity assumes that a power of decision should be exercised when the principles of law by which the ordinary courts of law are guided give a right, and the powers of these courts are not sufficient to afford a complete remedy or the modes of proceeding are inadequate to the purpose.
2. Courts of equity administer to the ends of justice by (1) restraining the assertion of doubtful rights in a manner productive of irreparable damage, or (2) by preventing injury to a third person by all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed and are injurious to others or by which an undue and unconscientious advantage is taken of another.
3. Title to land by adverse enjoyment owes its origin to and is predicated upon the statute of limitations, and although the state does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant who proves that he has actually occupied the premises under a color of right peaceably and quietly for the period prescribed by law. The statute of limitations thereupon may be properly referred to as a source of title and is really and truly as valid and effectual a title as a grant from the sovereign power of the state.

In an action to quiet title, judgment was given for petitioners in the Circuit Court. On writ of error, this Court remanded to the Circuit Court for trial *de novo*. On appeal to this Court after second trial and judgment for petitioners, *affirmed*.

*Brownell and Dixon* for petitioners. *Barclay & Barclay* for respondent.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

This was a bill in equity entered in the Equity Division of the Circuit Court of the Fourth Judicial Circuit, Maryland County, by Aletha Thorne, Francis O. Thorne, Jr., and Mary L. Dent, who claim to be the only legal heirs of Francis O. Thorne, Sr., late of the City of Harper, in said County, petitioners, against Otillia D. B. Thomson, respondent, to quiet title to lot No. 5 situated in said City.

The history of the case is substantially as follows: The said town lot No. 5 was originally the property of George S. Woods, the father of respondent. After the death of the said George S. Woods, his widow, Mary L. Woods, administratrix of his estate, became the wife of the said Francis O. Thorne, Sr., and in the year 1883 together with one James M. Thomson, her co-administrator, sold said lot under an order of sale issued by the Monthly and Probate Court of Maryland County, to the said Francis O. Thorne, Sr., who erected thereon a concrete building, in which he lived for more than twenty-five years. During this time he paid the taxes assessed on said lot, which taxes petitioners continued to pay until the year 1929.

Sometime after the death of the said Francis O. Thorne, Sr., his son Francis O. Thorne, Jr., one of the petitioners, permitted Otillia D. B. Thomson, the respondent in the case, to live in said building, she being his half-sister. The respondent having thereby access to all papers, deeds and assets of the estate of the said Francis O. Thorne, Sr., took them into her possession.

When subsequently petitioners applied to said respondent for the original and administrator's deed for said lot No. 5, the respondent failed to surrender them to said petitioners, fraudulently setting up an adverse claim to said lot. Meanwhile the respondent leased the premises to A. Woermann of Cape Palmas.

This case was heard at the May term 1925 of said court, His Honor E. J. S. Worrell, Judge presiding over said court by assignment, when a decree was rendered in favor of said petitioners. The judge decreed *inter alia* after hearing the evidence which clearly established the

title of the said Francis O. Thorne, Jr., to the property in dispute that the deed for said lot in the possession of respondent be cancelled and her claim to said premises declared void; that a new deed be awarded petitioners and the right, interest and emolument accruing from said premises be enjoyed by the said petitioners; and that respondent pay all costs of this action.

Respondent procured the issuance of a writ of error and brought the case to this Court for review and final determination at the November term 1925, but owing to diminution in the records and other causes, this Court remanded the case to the said Circuit Court for trial *de novo*.

When the case was called for hearing at the February term of the said court it was proven that respondent by her fraudulent acts and deeds had caused to be extracted from the records, certain important documents, to wit: The original bill in equity and the written instruments marked from "A" to "M," one of which missing documents was the administrator's deed given by J. M. Thomson and Mary L. Thorne, administrator and administratrix of the estate of J. S. Woods to F. O. Thorne, Sr.

At the November term 1929, it was ordered that the rent from said premises be sequestered until the final determination of the case and that such portion of the records as could be found be forwarded to this Court for review.

Judge E. J. S. Worrell, who presided over the trial of the case and at the investigation of the case at the May term 1925 of the said Circuit Court, and the rehearing of the case at the February term of said court, has forwarded a copy of his decree and the oral evidence in the case together with copies of depositions taken with reference to the fraudulent acts of respondent and certain officers of the court.

When the case was called for the re-hearing at this term of court, counsellor for petitioners submitted his brief and prayed the Court that in view of the clear, cogent and abundant evidence adduced at the trial of this case and

the decree of the court below rendered May 30, 1925, that the title of said complainants be confirmed and said decree affirmed, and the rents accruing from said premises be turned over to the heirs of F. O. Thorne, Sr.

Before arriving at a conclusion we deem it necessary to make the following observations:

Lord John Freeman-Mitford Redesdale, in his treatise on the pleadings in suits in the Court of Chancery by English Bill, remarks that the jurisdiction of a court of equity assumes that a power of decision should be exercised when the principles of law by which the ordinary courts of law are guided, give a right, but the powers of those courts are not sufficient to afford a complete remedy or the modes of proceedings are inadequate to the purpose. Courts of Equity administer to the ends of justice (1) by restraining the assertion of doubtful rights in a manner productive of irreparable damage; (2) by preventing injury to a third person by all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed and are injurious to others, or by which an undue and unconscientious advantage is taken of another. Redesdale, *Pleadings and Practice in Equity* (Am. ed. 1890), 207, 208.

A careful study of the case at bar leads us to the conclusion that the circumstance of the case fall under the rule thus presented.

The confidence reposed in respondent by Francis O. Thorne, Jr., who placed her in possession of the premises in dispute out of sympathy for her; the fraudulent conduct of respondent in taking possession of the title deeds of said premises and refusing to surrender them on demand to petitioners; the fraudulent acts of respondent in procuring the extraction of certain documents from the record, all point to the fact that the petitioners are entitled to equitable relief.

But aside from these facts the undisputed possession of the premises by petitioners and privies for more than

twenty-five years clearly established their title to said lot.

In *Page and Page v. Harland and King*, 1 L.L.R. 463 (1906), this Court quoted with approval the following quotation from Tyler, *Ejectment and Adverse Enjoyment*:

“Title to land by adverse enjoyment owes its origin to and is predicated upon the Statute of Limitations, and although the statute does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant, who proves that he has actually occupied the premises under a color of right, peaceably and quietly for the period prescribed by law.’ ‘The Statute of Limitations, therefore, may properly be referred to as a source of title; and is really and truly as valid and effectual as a grant from the sovereign power of the state.’ (Tyler on Ejectment and Adverse Enjoyment, pp. 87, 88.)”

In this and a number of other cases, this Court laid down the rule that undisputed possession of land for twenty years under color of right extinguished the claim of the former owner and quiets the possession of the actual occupant. We have, however, shown that Francis O. Thorne, Sr., had an administrator’s deed for said lot.

In view of the foregoing, in order to put an end to this long standing litigation, we are of the opinion that the decree of Judge Worrell rendered at the May term of said court, 1925, be affirmed, that is to say, that the deed in the possession of respondent be cancelled and that her claim to said premises is void; that a new deed be awarded petitioners and the right, interest and emoluments accruing from said premises be enjoyed by them; that the rents sequestered by orders of this Court be paid over to said petitioners and that respondent pay all costs of this suit. And it is hereby so ordered.

*Affirmed.*