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103 Md. 412, 63 A. 808

Court of Appeals of Maryland.
WHITRIDGE et al.
v.
MAYOR, ETC., OF **CITY** OF **BALTIMORE**.
April 20, 1906.

Appeal from Circuit Court, Baltimore County; N. Charles Burke, Judge.

Ejectment by the mayor and city council of the city of Baltimore, as trustee for the McDonough Educational Fund & Institute, against William H. Whitridge and another. From a judgment for plaintiff, defendants appeal. Affirmed.

Argued before McSHERRY, C. J., and BRISCOE, BOYD, PAGE, SCHMUCKER, and JONES, JJ.

West Headnotes

Appeal and Error 30 ⚿1008.1(1)
30k1008.1(1) Most Cited Cases
(Formerly 30k1008(1))
Findings of fact by the trial court are conclusive on appeal.

Appeal and Error 30 ⚿1050.1(2)
30k1050.1(2) Most Cited Cases
(Formerly 30k1050(1))
The admission of incompetent testimony to contradict other incompetent testimony is harmless.

Boundaries 59 ⚿3(5)
59k3(5) Most Cited Cases
In the location of the boundary lines as called for by a deed, metes and bounds always control courses and distances.

Boundaries 59 ⚿41
59k41 Most Cited Cases
In an action involving a disputed boundary line, a prayer that if the intent of the grantor in a certain deed was to make a road referred to the boundary, and such intent could only be gratified by adopting the center of the road then existing, where the same did not conform to courses and distances set out in the deed, then the court should disregard the courses and distances, where the same did not so conform, and determine the grant by the center line of the road, contained a correct statement of the law, and was not fatally defective because it contained the expression "the intent of the grantor," instead of "the intent of both parties to the deed.".

Boundaries 59 ⚿41
59k41 Most Cited Cases
Where the description in a deed called for a course "running along the center of a wagon road to be 20 feet wide" etc., and evidence fixed and designated the road as the boundary, a prayer declaring that the calls to and along the wagon road to be 20 feet wide were not sufficiently certain to govern the description by courses and distances, and that quantity was to be taken as the controlling factor, was properly rejected.

Julian I. Alexander, for appellants.
Col. David G. McIntosh, for appellee.

BRISCOE, J.
This is an action of ejectment, brought by the appellee, the mayor and city council of Baltimore, trustee of the McDonough Institute, against the appellants, to recover possession of two parcels of land, situate in Baltimore county; one containing 1.34 acres, more or less, and the other containing .21 of an acre, more or less. Both parties to the record claimed title under one William Tagart, late of Baltimore county, deceased, to whom the land was conveyed by Mary Ann Carroll by deed dated the 11th day of November, 1853. The plaintiff's title was derived under the will of Samuel H. Tagart, who inherited the property in dispute from his father, William Tagart. The defendants rest their claim upon the title of one Sophia C. Milligan, who obtained 12 acres and 35

perches of the original tract by deed dated May 6th, 1864, of William Tagart. The case was tried before the court sitting as a jury, and a judgment was rendered for the plaintiff for the first tract, and in favor of the defendants for the second tract, of land described in the declaration. At the trial, the defendants reserved two exceptions-one to the admissibility of the testimony, and the other to the granting of the plaintiff's prayer and to the rejection of the defendants' prayers.

The principal dispute in the case arises upon the correct location of the division line between the lands of the plaintiff and defendants; in other words, whether the description in the deed, "thence running along the center of a wagon road to be 20 feet wide," or whether the description by courses and distances, is to control. It is a well-settled rule of construction in regard to location that calls, metes, and bounds in the description of property granted are to control if they be established, and the courses and distances disregarded if they do not correspond with the calls. Thomas' Lessee v. Godfrey, 3 Gill & J. 142; Friend v. Friend, 64 Md. 328, 1 Atl. 865; Wood v. Ramsey, 71 Md. 9, 17 Atl. 563. In this case the courses and distances in the Milligan deed are inconsistent with the call for the wagon road, and the testimony is to the effect that the road was regarded as the dividing boundary between the Tagart and Cross properties on the east side and the Milligan property on the west side of the road.

The witness Woolen testified: He had known the properties located on the map for 64 years. He knew Mr. and Mrs. Milligan very well, and they lived where Mr. Whitridge now lives. The old road has been absorbed by Green Spring avenue, about the center of it. A portion of Green Spring avenue now runs over that portion of the old road between Mr. Whitridge and Mr. Cross, and the balance on the McDonough property. That he never knew of any road except the road absorbed by Green Spring avenue, and he had known this road since 1864. Mr. Cockey testified: He had known the road and the properties binding on it 50 years. As long as he had known it, the road bed had been where Green Spring avenue is now located. There is no other road there, and no marks of any, and no place for a road to go. Mr. Malonne testified that he had also known the road, running where Green Spring avenue now is, since 1844, and it was near where Green Spring avenue now is. Mrs. Clagett testified that the roadbed to-day is where it was on the 25th day of April, 1867. Upon this testimony and the other evidence in the case, it was the province of the court, sitting as a jury, to find the facts and to ascertain and determine the question of the existence of a boundary or call; in other words, whether such a road as that described in the Milligan deed existed or not, and whether its roadbed, or the center line thereof, be the same as the center line of Green Spring avenue. As these questions were determined by the court sitting as a jury, they are not now before us on this appeal. Connelly v. Bowie, 6 Har. & J. 141; Byer v. Etnyre, 2 Gill, 161, 41 Am. Dec. 410.

***810** There were two exceptions taken at the trial. The first was not pressed in the argument, nor insisted upon in the appellants' brief. The appellants were in no way, however, injured by the admission of the testimony set out in this exception, even if the question and answer should be ruled to be irrelevant. It appears that testimony of other witnesses upon the same point was subsequently admitted without objection as to the location of the old roadbed during the same period. The second objection brings up for review the action of the court upon the prayers; that is, in granting the plaintiff's first prayer and in refusing the defendants' first and second prayers.

The first prayer of the plaintiff presented the proposition that if the court, sitting as a jury, find that in the deed from Tagart to Milligan the intent of the grantor, in the light of all the evidence, was

to make the road referred to in said deed the boundary between the land granted and that portion reserved, and that such intent can only be gratified by adopting the center of the road then existing, where the same does not conform to the courses and distances set out in the deed, then the court could disregard the courses and distances where the same do not conform to the center of the road and to determine the boundaries of the grant by the center line of the road. This prayer submitted the law of the case for the reasons stated, and the court committed no error in granting it. The technical objection that the prayer is defective, because it contained the expression "the intent of the grantor," instead of "the intention of both the parties to the deed," can furnish no reason for reversing the judgment. The defendants were not injured thereby.

The defendants' first prayer was properly rejected. It was the converse of the plaintiff's prayer, and was to the effect that by the true construction of the words describing the first seven boundary lines of the lot in the deed from Tagart to Milligan the lines were to be run according to the courses and distances, etc., as therein expressed. The defendants' second prayer in substance declared that the calls to and along a wagon road, to be 20 feet wide, in the deed, are not sufficiently certain to govern the description by courses and distances, and that quantity is to be taken as the controlling factor. There was no error in the rejection of this prayer. The description in the deed, "running along the center of a wagon road, to be 20 feet wide," etc., and the testimony of the witnesses, fixed and designated the road as the boundary. In Friend v. Friend, 64 Md. 328, 1 Atl. 865, it is said that metes and bounds in the description of the premises granted control courses, distances, and quantities when there is any inconsistency or conflict between them.

Finding no error in the exceptions relied on, the judgment will be affirmed.

Judgment affirmed, with costs.

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