

In actions of ejectment the producing the grant of the proprietary is the first step in deducing title; if that is wanting, and inferior testimony is resorted to for presuming a grant, the foundation must be laid by stating and combining all the facts and circumstances existing in the case, on which the prayer to the court is to be made for their direction to the jury, to presume and find a grant.

In this case, to repel the plaintiff's title, an attempt is made by the defendant to prove an antecedent grant, without producing it, or giving any evidence that such grant ever existed, without showing an incipient title, or proof that the records of the land office were lost or destroyed, and without showing any rightful possession accompanying the defendant's claim.

Length of possession is the great and leading fact in presuming grants and deeds, and without which no grant or deed can be presumed.

There are no facts stated in the *first* bill of exceptions, by which the right and possession of the proprietary could be divested. It is not stated that *Clark* was ever in possession of the land; and if he was, he was an intruder, and his deed could not operate to transfer any right to the land, for he had no right or interest to transmit; and the entry and possession of *Franklin* under *Clark's* deed, was an intrusion, the land being vacant land. The proprietary continued in possession until the act of confiscation; and the acts for appointing commissioners vested the right to the land, and the actual seisin and possession, in the state, which continued in the state until the grant made to *Cockey*, the lessor of the plaintiff.

The court are of opinion, that the deed from *Clark* to *Franklin*, and the certificate of the receipt for the alienation fine endorsed on that deed, are not legal and competent evidence; and that the court below erred in admitting the same to be read to the jury to show title in the defendant to the land in question, and do dissent from the opinion expressed in the *first* bill of exceptions.

It is the exclusive right of the court to decide on the legality and competency of all testimony, which is to be read or given to the jury; and this court are of opinion, that the court below erred in allowing the three papers, purporting to be copies of certificates for *Gibson's Forest* and *Warner's Chance*, to be read in evidence to the jury, the same not