

It is denied by the Solicitor for Stillions that this Court has jurisdiction to try the case because, as alleged, the question of the title to real estate is involved and complainants must therefore first determine their right and title to the property by an action at law, citing:

Hecht vs. Colquhoun, 57 Md. 563,  
Savary vs. Da. Camera, 60 Md. 139,

But in those cases the object of the bill was not the same as in this. It was manifest in those cases that the object of the bill was to determine title, but here the purpose of the bill is to sell real estate for the purposes of partition, and there is no intimation in the bill of any question about the title. It could not therefore have been demurred to.

Barron vs. Zimmerman, 117 Md. 303,  
Eureka Vs. Geis, 121 Md. 200,

Nor could a Court of law do complete justice or afford adequate relief, even if the title were successfully established by the complainants in a court of law, there would still be the necessity for partition proceedings in Equity, and as Stillions is a proper party to such proceedings by reason of his being the surviving husband of a deceased daughter of the intestate decedent, and was made such for the sole purpose of obtaining a decree for sale, we think the Court thereby acquired jurisdiction and that the same is not ousted by the defense made by Stillions as above set forth. The objection of the ground of want of jurisdiction will therefore be overruled.

As to the title acquired by Mrs. Mary Ann Stillions. She was one of several children of Isaac Michael, deceased, therefore she was a tenant in common with the other heirs of her father, unless the writing on the back of the Sheriff's receipt made her holding adverse. Does the writing on the back of the receipt make the holding adverse? Does that lead pencil memorandum pass any title or interest to Mary Ann in and to the property, that would render her possession exclusive of that of her brothers and sisters, nephews and nieces, and thus amount to an exclusion of their possession?

It has been said that whether one tenant in common is in possession, his co-tenant is, in contemplation of law, in possession also, and that ouster must be established by acts or declarations brought home to the knowledge of the co-tenant.

Van Bibber vs. Frazier, 17 Md. 436.

This memorandum was no contract of sale, it was a mere indication of the father's desire that the daughter, Mary Ann, should have the property, as a present from him, either forthwith or after his death "Mary B. Michael, present by her father". These words written on the back of the Sheriff's receipt dated in 1864. That is all. These pencil words did not make a deed, a will or a contract of sale. Just when they were written is not known. There is even some question as to who wrote them. But we cannot bring our minds to the conclusion that they changed the legal descent of title, to all the heirs at law of the decedent, Isaac Michael.

There was no livery of seizin, no binding contract of sale, nothing of record, no valid will, and nothing whatever to bring home to the knowledge of the other heirs of the decedent that the daughter, Mary Ann, was holding adversely to their rights.

We are of opinion, therefore, that upon the death of Isaac Michael intestate, title to the property in question was cast by descent upon all his heirs at law, and that the possession of Mary Ann was in law the possession of all the co-tenants, and that there has been no ouster of them and no adverse possession by Mary Ann.

The prayer of the bill of complaint for a decree for the sale of the property will therefore be granted, and the contention of Frank Stillions to be the sold owner of the property under the will of his wife, Mary Ann Stillions, denied.

(Filed June 20, 1917)

Hammond Urner  
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