

**Sharon Vs. Tucker**

**Sharon Vs. Tucker**

**SooperKanoon Citation :** [sooperkanoon.com/87043](http://sooperkanoon.com/87043)

**Court :** US Supreme Court

**Decided On :** Apr-11-1892

**Appeal No. :** 144 U.S. 533

**Appellant :** Sharon

**Respondent :** Tucker

**Judgement :**

Sharon v. Tucker - 144 U.S. 533 (1892)

U.S. Supreme Court Sharon v. Tucker, 144 U.S. 533 (1892)

**Sharon v. Tucker**

**No. 218**

**Argued March 15-16, 1892**

**Decided April 11, 1892**

**144 U.S. 533**

*APPEAL FROM THE SUPREME COURT*

*OF THE DISTRICT OF COLUMBIA*

# SYLLABUS

Adverse possession of real estate in the District of Columbia, for the period designated by the statute of limitations in force there, confers upon the occupant a complete title upon which he can stand as fully as if he had always held the undisputed title of record.

A possession, to be adverse, must be open, visible, continuous and exclusive, with a claim of ownership, such as will notify parties seeking information upon the subject that the premises are not held in subordination to any title or claim of others, but against all titles and claimants.

A person who has acquired title by adverse possession may maintain a bill

Page 144 U. S. 534

in equity against those who, but for such acquisition, would have been the owners for the purpose of having his title judicially ascertained and declared, and to enjoin the defendants from asserting title to the same premises from former ownership that has been lost.

Such a bill is not a bill of peace, nor is it strictly a bill *quia timet*.

The ground of the jurisdiction is the obvious difficulty and embarrassment in asserting and protecting a title not evidenced by any record, but resting in the recollection of witnesses, and the warrant for its exercise is found in the ordinary jurisdiction of equity to perfect and complete the means by which the right, estate or interest of holders of real property, that is their title, may be proved or secured, or to remove obstacles to its enjoyment.

The Court stated the case as follows:

This is a suit in equity to establish, as matter of record, the title of the complainants to certain real property in the City of Washington, constituting a part of Square No. 151, and to enjoin the defendants from asserting title to the same premises as heirs of the former owner.

The facts which give rise to it, briefly stated, are as follows: in 1828, Thomas Tudor Tucker died seised of the premises in controversy. He had at one time held the office of Treasurer of the United States, and resided in Washington, but at the time of his death he was a resident of South Carolina. The property did not pass under his will, but descended to his heirs at law. It does not appear that after his death any of the heirs took possession of the property or assumed to exercise any control over it. In 1837, the square was sold for delinquent taxes assessed by the city against "the heirs of Thomas T. Tucker," and was purchased by Joseph Abbott, then a resident of the city. The taxes amounted to \$38.76, and the sum bid by the purchaser was \$250. In 1840, a tax deed in conformity with the sale was made to Abbott, purporting to convey to him a complete title to the square. It is admitted that the deed was invalid for want of some of the essential preliminaries in assessing the property and in advertising it for sale. It does not appear, however, that the purchaser had any knowledge of this invalidity. Early in the following year, 1841, he took possession of the square and

Page 144 U. S. 535

enclosed it with a board fence and a ditch with a hedge planted on one side of it. It was a substantial enclosure, sufficient to turn stock and keep them away. He was a stablekeeper, and, in connection with this business, cultivated the ground and raised crops upon it in 1841. From the time he took possession until 1854, the square was enclosed, and each season it was cultivated. In 1854, he leased the square to one Becket for the period of ten years at a yearly rent of \$100. Becket took possession under his lease, and kept the ground substantially enclosed, and he occupied and cultivated it from that time up to 1862. In the fall of that year, soldiers of the United States, returning from the campaign in Virginia, were encamped upon the square, and, as it appears, they committed such depredations upon the fence, buildings, and crops that the lessee was obliged to abandon its cultivation. Abbott died in April, 1861, and by his will devised the square to his widow. In August, 1863, she sold and conveyed it to one Perry, and he kept a man in charge of the same, who lived in a small building which Becket had built and occupied during his lease of the premises under Abbott. In 1868, Perry sold the

entire square to Henry A. Willard for the consideration of \$17,600. He divided the square into small lots for buildings for residences, and upon one side of the square, fronting on T Street, erected 12 substantial dwelling houses, which have been since occupied up to the commencement of this suit. In 1872, Willard sold and conveyed a portion of the square, the premises in controversy, to J. M. Latta, trustee, for a valuable consideration, and from him the title has passed by regular conveyances to the complainants herein. From 1840 to 1863, the square was chiefly valuable for agricultural purposes, but since then, and especially of late years, its only value has been for buildings as residences, and has been so regarded by its owners. From 1840 up to the present time, the taxes upon the property have been paid by Abbott and his successors in interest. None of the heirs of Mr. Tucker, nor anyone claiming under the heirs, has paid or offered to pay any taxes assessed on the property, nor since that date

Page 144 U. S. 536

up to the commencement of these suits have any of the defendants therein or their predecessors in interest asserted any claim to the property or interest in it or attempted in any way to interfere with its possession or control. Soon after the sale to Perry, in 1863, the tax deed was passed upon by eminent counsel in the District -- the late Richard S. Coxe and James M. Carlisle -- and the title by it was pronounced by them to be indisputable. It was only a short time before the institution of this suit that the invalidity of the tax deed as a source of title was ascertained. A desire to dispose of the property led the complainants to have an investigation made and an abstract of title obtained. It was then discovered that they could not obtain any abstract of title which purchasers would accept in consequence of certain defects in the assessment of the taxes under which the sale was made and the deed to Abbott was executed. They were consequently embarrassed and defeated in their efforts to dispose of the property. To remove this embarrassment, this suit was accordingly brought by the complainants to obtain a judicial determination of the validity of their title and injunction against the defendants claiming under the previous owner.

There was no substantial disagreement between the parties as to the facts, but the defendants insisted and relied solely upon the ground that a court of equity could afford no relief to the complainants because they were not at the commencement of the suit in actual possession of the premises.

The court below at special term sustained this view, and entered a decree dismissing the bill. At general term it affirmed that decree, and to review this last decree the case is brought here by appeal.

Page 144 U. S. 540

MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court.

The title of the complainants is founded upon the adverse possession of themselves and parties through whom they derive their interests, under claim and color of title, for a period exceeding the statutory time which bars an action for the recovery of land within the District of Columbia. The statute of limitation to such cases in force in the District is that of 21 James I, c. 16. That statute, passed "for quieting of men's estates and avoiding of suits," among other things,

Page 144 U. S. 541

declared that no person or persons should at any time thereafter make any entry into any lands, tenements, or hereditaments but within twenty years next after his or their right or title shall thereafter have first descended or accrued to the same, and that in default thereof such persons not entering, and their heirs, should be utterly excluded and debarred from such entry thereafter to be made, any former law or statute to the contrary notwithstanding.

Twenty years is therefore the period limited for entry upon any lands within this District after the claimant's title has accrued. After the lapse of that period, there is no right of entry upon lands against the party in possession, and all actions to enforce any such alleged right are barred. Complete possession, the character of which is hereafter stated, of real property in the District for that period, with a claim of ownership, operates therefore to give the occupant title to the premises. No one

else, with certain exceptions -- as infants, married women, lunatics, and persons imprisoned or beyond the seas, who may bring their action within ten years after the expiration of their disability -- can call his title in question. He can stand on his adverse possession as fully as if he had always held the undisputed title of record.

The decisions of the courts have determined the character of the possession which will thus bar the right of the former owner to recover real property. It must be an open, visible, continuous, and exclusive possession, with a claim of ownership, such as will notify parties seeking information upon the subject that the premises are not held in subordination to any title or claim of others, but adversely to all titles and all claimants. In the present cases, the adverse possession of the grantors of the complainants, sufficient to bar the right of previous owners, is abundantly established within the most strict definition of that term.

The objection of the defendants to the jurisdiction of a court of equity in this case arises from confounding it with a bill of peace and an ordinary bill *quia timet*, to neither of which classes does it belong, nor is it governed by the same principles. Bills of peace are of two kinds: first, those

Page 144 U. S. 542

which are brought to establish a right claimed by the plaintiff, but controverted by numerous parties having distinct interests originating in a common source. A right of fishery asserted by one party, and controverted by numerous riparian proprietors on the river, is an instance given by Story where such a bill will lie. In such cases, a court of equity will interfere and bring all the claimants before it in one proceeding to avoid a multiplicity of suits. A separate action at law, with a single claimant, would determine nothing beyond the respective rights of the parties as against each other, and such a contest with each claimant might lead to interminable litigation. To put at rest the controversy and determine the extent of the rights of the claimants of distinct interests in a common subject, the bill lies, which is thus essentially one for peace. Second, bills of peace of the other kind lie where the right of the plaintiff to real property has been unsuccessfully assailed in different actions, and is liable to further actions of the same character, and are

brought to put an end to the controversy. "The equity of the plaintiff in such cases arose," as we said in *Holland v. Challen*, [110 U. S. 15](#) , [110 U. S. 19](#) ,

"from the protracted litigation for the possession of the property which the action of ejectment at common law permitted. That action being founded upon a fictitious demise between fictitious parties, a recovery in one action constituted no bar to another similar action, or to any number of such actions. A change in the date of the alleged demise was sufficient to support a new action. Thus, the party in possession, though successful in every instance, might be harassed and vexed, if not ruined, by a litigation constantly renewed. To put an end to such litigation and give repose to the successful party, courts of equity interfered and closed the controversy. To entitle the plaintiff to relief in such cases, the concurrence of three particulars was essential: he must have been in possession of the property; he must have been disturbed in its possession by repeated actions at law, and he must have established his right by successive judgments in his favor. Upon these facts' appearing, the court would interpose and grant a perpetual injunction to quiet the possession of the plaintiff against any further

Page 144 U. S. 543

litigation from the same source. It was only in this way that adequate relief could be afforded against vexatious litigation and the irreparable mischief which it entailed. Adams on Equity 202; Pomeroy's Equity Jurisprudence 248; [Stark v. Starr](#), 6 Wall. 402; *Curtis v. Sutter*, 15 Cal. 259; *Shepley v. Rangely*, 2 Ware 242; *Devonsher v. Newenham*, 2 Schoales & Lef. 199."

It is only where bills of peace of this kind -- more commonly designated as bills to remove a cloud on title and quiet the possession to real property -- are brought that proof of the complainant's actual possession is necessary to maintain the suit. *Frost v. Spitley*, [121 U. S. 552](#) , [121 U. S. 556](#) .

There is no controversy such as here stated in the present case. The title of the complainants is not controverted by the defendants, nor is it assailed by any actions for the possession of the property, and this is not a suit to put an end to

any litigation of the kind. It is a suit to establish the title of the complainants as matter of record -- that is, by a judicial determination of its validity -- and to enjoin the assertion by the defendants of a title to the same property from the former owners, which has been lost by the adverse possession of the parties through whom the complainants claim. The title by adverse possession, of course, rests on the recollection of witnesses, and, by a judicial determination of its validity against any claim under the former owners, record evidence will be substituted in its place. Embarrassments in the use of the property by the present owners will be thus removed. Actual possession of the property by the complainants is not essential to maintain a suit to obtain in this way record evidence of their title, to which they can refer in their efforts to dispose of the property.

The difference between this case and an ordinary bill *quia timet* is equally marked. A bill *quia timet* is generally brought to prevent future litigation as to property by removing existing causes of controversy as to its title. There is no controversy here as to the title of the complainants. The adverse possession of the parties through whom they claim was complete within the most exacting judicial definition of the term. It is now well settled that, by adverse possession for the period

Page 144 U. S. 544

designated by the statute, not only is the remedy of the former owner gone, but his title has passed to the occupant, so that the latter can maintain ejectment for the possession against such former owner should he intrude upon the premises. In several of the states this doctrine has become a positive rule by their statutes of limitations, declaring that uninterrupted possession for the period designated to bar an action for the recovery of land shall of itself constitute a complete title. [Leffingwell v. Warren](#), 2 Black 599; [Campbell v. Holt](#), [115 U. S. 620](#) , [115 U. S. 623](#) .

"As a general doctrine," says Angell in his treatise on Limitations,

"it has too long been established to be now in the least degree controverted that what the law deems a perfect possession, if continued without interruption during the whole period which is prescribed by the statute for the enforcement of the right of entry, is evidence of a fee. Independently of positive or statute law, the possession supposes an acquiescence in all persons claiming an adverse interest, and upon this acquiescence is founded the presumption of the existence of some substantial reason (though perhaps not known), for which the claim of an adverse interest was forborne. Not only every legal presumption, but every consideration of public policy requires that this evidence of right should be taken to be of very strong, if not of conclusive, force."

As the complainants have the legal right to the premises in controversy, and as no parties deriving title from the former owners can contest that title with them, there does not seem to be any just reason why the relief prayed should not be granted. Such relief is among the remedies often administered by a court of equity. It is a part of its ordinary jurisdiction to perfect and complete the means by which the right, estate, or interest of parties -- that is, their title, -- may be proved or secured, or to remove obstacles which hinder its enjoyment. 1 Pomeroy's Equity Jurisprudence, vol. 1, sec. 171. The form of the remedy will vary according to the particular circumstances of each case. "It is absolutely impossible," says Pomeroy in his treatise,

"to enumerate all the special kinds of relief which may be granted or to place any bounds to the

Page 144 U. S. 545

power of the courts in shaping the relief in accordance with the circumstances of particular cases. As the nature and incidents of proprietary rights and interests and of the circumstances attending them and of the relations arising from them are practically unlimited, so are the kinds and forms of specific relief applicable to these circumstances and relations."

In *Blight's v. Banks*, 6 T.B.Monroe 192, a bill was filed by the complainant to supply the want of certain records or conveyances under which he claimed title, said to have been executed and lost. A patent had been issued by the Commonwealth of Virginia for a large amount of property which, by various intermediate conveyances, had become vested in the complainant. These conveyances had not been recorded, and on that ground the complainant alleged that his title was in jeopardy from creditors and innocent purchasers, that with great difficulty any title could be established at law, because the conveyances could not be given in evidence without parol proof, and that some of the witnesses were dead and some of the original conveyances were lost, and could not be found. His prayer was that his title might be rendered complete as a recorded title by the decree of the chancellor. The first question made in the case by the defendant was as to the jurisdiction of the court. It was contended that such omissions in completing a defective title were generally the fault of the grantees, and that equity would not sustain a bill for that purpose. But the Court of Appeals of Kentucky replied that it could not doubt the propriety of the interference of the chancellor in such case. "Equity," said the court,

"will frequently interfere to remove difficulties in land titles where a party cannot proceed without difficulty at law, where the conveyances are lost or in the possession of the opposite party, or where the parties are numerous and the proof hard of access, and in many such cases it will lighten the burden, and settle many controversies, and bring them into a small scope. And where the title is purely legal, for such and similar causes to those we have enumerated, equity has carved out a branch of jurisdiction, and a class of bills, termed in the books 'ejectment bills,' in which not only the title is made clear,

Page 144 U. S. 546

but the possession decreed also. No reason is perceived by us why the present case is not within the spirit of these cases. The difficulties in an unrecorded title, especially if it is derived through a long chain of conveyances, are familiar to our courts in this country. The danger to which the title is exposed from two classes of persons, creditors and subsequent purchasers, is often great, and the facilities

afforded from a title which can be read in evidence without other proof than the authentication annexed are felt by everyone who has to bring his title into court for attack or defense, and the present case will furnish a good comment on the propriety of the interference of the chancellor."

The court therefore decreed the relief prayed. On a petition for a rehearing, it reviewed its former opinion, the main point of which was the jurisdiction of the court of equity over the bill, and said:

"It is true that bills to make legal titles which are valid against all the world, except two descriptions of persons, recorded titles, and thus to protect them from creditors and innocent purchasers, have not been frequent. But if such bills cannot be allowed under one state of conveyances, it must certainly be said that there is a defect of justice in our country. A court of common law can give no relief in such a case, and if equity cannot do it, then is the case a hopeless one. If, however, the principles which govern courts of equity are examined, it will be found that there are many circumstances in this case, independent of defective conveyances, which sustain the jurisdiction."

Pp. 220-221. See also *Simmons Creek Coal Co. v. Doran*, [142 U. S. 417](#) , [142 U. S. 419](#) .

In *Horde v. Baugh*, 7 Humph. 576, 578, a bill was filed by the complainant asking the aid of a court of chancery to set up a deed of bargain and sale, which was lost or destroyed before registration, the bargainor having died without executing another. The chancellor below dismissed the bill upon the ground that the bargainor, having once conveyed the land, had parted with all his interest therein, and that the court had no jurisdiction of such a case. But the Supreme Court of Tennessee thought the chancellor erred, saying:

"The loss of the deed is a casualty seriously endangering the complainant's

title, as he can maintain no action of ejectment without it. He then certainly must have a right to ask the aid of a court of chancery in his case, either by having the legal title vested in him as against the bargainor and his representatives or by having the deed set up and established as in all other cases of lost deeds. The complainant may have his decree for either or both of these remedies."

In *Montgomery v. Kerr*, 6 Coldwell 199, the same court sustained a bill and established the complainant's title where a deed of the property had been lost. The decree was that the complainant was entitled, by virtue of and under his deed, to hold the premises in fee simple, and that the defendant had no right, title, or interest therein.

In *Bohart v. Chamberlain*, 99 Mo. 622, 631, the proof showed that a deed of trust which had been executed by defendant to the plaintiff had been subsequently lost without being recorded. The court, on being satisfied of the correctness of the finding of the lower court to this effect, said:

"No doubt is entertained that a court of equity would have jurisdiction to afford the relief prayed for in the petition. One of the most common interpositions of equity is in the case of lost deeds and instruments. A court of equity, in case of the loss of an instrument which affects the title or affords a security, will direct a reconveyance to be made. Citing *Stokoe v. Robson*, 19 Ves. 385; 1 Story's Eq. Jur. Secs. 81, 84; *Lawrence v. Lawrence*, 42 N.H. 109; 1 Mad.Ch. 24; Fonblanque's Equity c. 1, sec. 3."

And the court added that

"under the authorities cited, the lower court might have directed a re-execution of the deed of trust; but, as its powers were flexible, it could accomplish the same object by a declaratory decree establishing the existence of the deed in question. 2 Pomeroy's Eq. Sec. 827; *Garrett v. Lynch*, 45 Ala. 204; 1 Pomeroy's Eq. Secs. 171, 429."

Many other authorities to the same purport might be cited. They are only illustrative of the remedies afforded by courts of equity to remove difficulties in the

way of owners of property using and enjoying it fully when, from causes beyond their control, such use and enjoyment are obstructed. The

Page 144 U. S. 548

form of relief will always be adapted to the obstacles to be removed. The flexibility of decrees of a court of equity will enable it to meet every emergency. Here, the embarrassments to the complainants in the use and enjoyment of their property are obvious and insuperable except by relief through that court. No existing rights of the defendants will be impaired by granting what is prayed, and the rights of the complainants will be placed in a condition to be available. The same principle which leads a court of equity, upon proper proof, to establish by its decree the existence of a lost deed, and thus make it a matter of record, must justify it, upon like proof, in declaring by its decree the validity of a title resting in the recollection of witnesses, and thus make the evidence of the title a matter of record. It is therefore

*Ordered that the decree of the court below be reversed, and the cause remanded to that court with directions to enter a decree declaring the title of the complainants to the premises described in their complaint, by adverse possession of the parties through whom they claim to be complete, and that the defendants be enjoined from asserting title to the said premises through their former owner. Each party to pay his own costs.*

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**