

14006

No. _____

Supreme Court of Illinois

Craig

vs.

Files

Thomas Craig
v.
Hannah Files &
Robert France.

Eject. for S. W. 10, 4 N. 2 E., in
Fulton County, commenced
Dec. 4th 1854.

Plff's case

Patent to Allanson Conley, dated Oct. 6th 1817.

Deed from Conley to plff., dated Oct. 26th 1854.

Def't case.

Copy of deed from Conley to Comsted, dated
April 23rd 1819, recorded Oct. 9th 1819.

Deed from Deyles & Ross to Jope France, dated
Sept. 2nd 1850.

Tax receipts to Jope France for 1851, 1852, 1853
& 1854; and to the heirs of Jope France for 1855,
1856 & 1857; the tax for 1851 was paid Jan. 22nd
1852; that for 1857 Nov. 25th 1857.

Jope France took possession of the land in Sept.
1850, and continued in possession till his death in
1852. His family have since remained in possession.
Jope France claimed to own the land while in
possession, and since his death his family have
claimed to be the owners. Hannah Files is the
widow of Jope France, and Robert France his
son.

Plff's rebutting testimony.

Conley, the patentee, testifies that he never
executed a deed of the land to Comsted, and
there is testimony tending to corroborate him.

The proof makes out a prima facie case against the genuineness of the deed from Conley to Comstock. There is therefore no pretence of an outstanding title. The plff. is entitled to recover unless the depts. can defend the action under the provisions of the Act of March 2nd 1839—Actual possession and payment of taxes for seven successive years, under claim and color of title.

Jepe France and the depts. had actual possession of the land, and claim and color of title thereto, for seven successive years before the bringing of the action. If they paid all taxes assessed on the land during that period of time, the case is within the provisions of the statute.

Possession and payment of taxes, under claim and color of title, to be available, must unite for the entire seven years. They must run together for that length of time. The statute does not begin to run until these requisites concur. Payment of taxes for seven years will not suffice, without possession for the same period. Nor will possession for seven years be of any avail, unless accompanied by the payment of taxes for the same time.

Yps Franer and the depts. had seven years
populism, and they also paid seven years taxes.
But this populism and payment did not cover
the same period of time. A part of 1857, for which
year the taxes were paid, had not expired, when
the writ was brought; and no taxes were paid
for 1850, the year in which populism was taken,
and in which the statute must have commenced
to run, in order to make the defence available.
Populism and payment of taxes did not commence
till 1851. As populism was taken in 1850, and
taxes paid for the following year, the statute
began to operate on the 1st of Jan. 1851. But it
had not run long enough, when the action was
brought, to entitle the depts. to the benefit of
its provisions.

Yps Franer should have paid the
taxes for 1850, and then the statute would have
operated from the time of acquiring populism. The
taxes embraced that portion of the year in which
he had populism. They were imposed for the whole
year, and the year had not expired, when he
acquired color of title and populism. The taxes
were an existing charge on the land long after
populism was taken. They were not in fact
payable until Nov. 1850. Act. of Feb. 8th 1849, S. 2.
This failure to pay the taxes of 1850, effectually
concludes the depts. from inheriting any defence
under the statute of limitations.

The pl. off. must have paid.

Craig v. Filer & Faver

14006