

## Oxford Journal - Saturday 09 February 1895

## DAVID BRYDEN v. EDWIN BIRD.

This was a common jury action, and damages were claimed for trespass. The statement of claim set forth that the plaintiff was in possession of a dwelling house at Wheatley, known as "The Firs," and that on the 18th of May the defendant by his agent, William Taylor, wrongfully broke and entered the said dwelling house and seized and converted to his own use certain goods and chattels to the loss and damage of the plaintiff, who claimed 100*l.* damages and 5*l.* 2*s.* which he had paid to defendant under protest. For the defence, the defendant admitted that he received 5*l.* 2*s.*, and stated that he was the sole executor and devisee of James Ring, who died on February 25, 1894, and as such became entitled to the reversion of the premises referred to on the death of James Ring; by an agreement dated June 24, 1893, the plaintiff became tenant of James Ring of the premises mentioned, at a rent of 4*l.* 10*s.* per quarter; the plaintiff neglected and refused to pay to defendant the rent for the quarter ending March 25, 1894, and on May 18, 1894, the defendant by his agent William Taylor entered the premises and seized the goods and chattels on the same by way of distress for the rent then due and in arrears, which were the grievances alleged in the statement of claim. In reply the plaintiff said that James Ring died intestate. In the alternative, the plaintiff said that James Ring was in his lifetime the husband of Fanny Ring, who was since 1865 seized and possessed of the premises for her life, and that James Ring was during the joint lives of himself and Fanny Ring entitled *jure mariti* to the possession of the premises. James Ring devised the premises to the plaintiff (if at all, which was not admitted) in right of his said estate and interest in the same, and not otherwise. All the estate and interest of the said James Ring in the premises ceased and determined at his death on February 25th, 1894. In the further alternative, the plaintiff said on or about the 16th day of April, 1894, Fanny Ring, who then claimed to be and was and is entitled to the premises by a title paramount to that (if any) of the said James Ring, and to that (if any) of all persons claiming through or under him, entered upon the premises and threatened and intended to evict the plaintiff therefrom, whereupon the plaintiff to avoid such eviction attorned tenant to the said Fanny Ring, and paid to her a composition in respect of her then previous occupation of the premises, and thereupon all rights and remedies if any of all persons claiming through or under the said James Ring in respect of the said premises or under the alleged agreement on the 24th June, 1893, ceased and determined.

Mr. Lawrence and Mr. C. H. Walsh, instructed by Mr. Gordon Walsh, solicitor, Bicester, were for the plaintiff, and Mr. McCarthy, instructed by Messrs. Mallam and Son, solicitors, Oxford, was for the defendant.

Mr. Lawrence, in stating the case, said the action was both for damages and to establish the house called "The Firs," at Wheatley where Mr. Bryden lived with his family, and the distress levied upon which was very provocatory, the circumstances being these. Mr. Bird was a Congregational Minister at Wheatley, at one time, and was now living at Littleworth; he became acquainted with a Mr. Ring, a publican and grocer, and Mrs. Ring had property in her own right, and they made money in their business. Mrs. Ring was the purchaser of the house, and

was the owner of it, subject to Mr. Ring getting a life interest in it in the event of his surviving his wife. Family jars ensued, which ended in Mrs. Ring living at Forest Hill; and Mr. Ring, having the right of possession of the house jointly with his wife during their lives, lived there until he let it, through Mr. Bird, to Mr. Bryden, the plaintiff, on a quarterly tenancy. Mr. Ring died twelve months ago, and the wife then became the landlord of Bryden, and as Bird let it he evidently had the knowledge that the house was the property of Mrs. Ring. The solicitors took the deed to the other side for them to examine it, and so again Bird and his solicitors knew in whose name the title of the house rested. The rent due by Bryden was Mrs. Ring's, but notwithstanding all that he knew of the matter Bird wrote on the 13th March to say that he was his sole trustee, and asking for the quarter's rent. Letters were sent pointing out that the house was the property of Mrs. Ring and no one else, but he continued to claim a right to it. On the 28th of March Bird wrote to Bryden advising him to hold the rent until a dispute was settled, notwithstanding that Mrs. Ring was claiming it, and eventually on the 2nd of May the rent was paid to her, and Bird was informed of it; he replied that trouble would follow; he did not say that the house was his, but that he continued to hold Mr. Ring's interest in it as executor, and a distress was put in for the rent. Bird then said he was the devisee of the house, but as Mr. Ring had nothing to leave in connection with the house that could not be so, for at his death the house became Mrs. Ring's entirely. When the bailiffs were put in possession Mrs. Bryden was near her confinement, and they lodged somewhere else, and Mr. Bryden went into Oxford, got the money, and paid the man out. This was injurious to Mr. Bryden in his business, that of a travelling draper, and he had been asked to give explanations to people who asked what it all meant. The question of damages was one which the jury would have to decide, as a sum of money was paid under protest to pay out the distress.

In reply to his Lordship,

Mr. McCarthy said that Mr. Ring was entitled to the property by virtue of the Statute of Limitations, as he had been in possession of the property for at least twelve years. From letters which he had he would show that Mrs. Ring understood that the house was not hers. The property was actually purchased by Ring. (The deed was handed to his Lordship.)

His Lordship said the property was to go to the heirs of Mrs. Ring.

Mr. McCarthy said Mr. Ring went into possession when differences arose.

Mr. Lawrence said that no such defence as the Statute of Limitations had been pleaded.

Mr. McCarthy said he did not go entirely upon that; he contended that there was a title.

His Lordship—Where is the will devising this to you.

Mr. McCarthy—We have it here, and ordinary probate was granted, but owing to a petition of Mrs. Ring probate was re-called, and the case is now down for hearing.

His Lordship—Have I the power to determine the validity of a will which is in dispute in the Probate Court?

Mr. McCarthy submitted that it was for his learned friend to solve the riddle; he would suggest that this action should stand over until the validity of the will was decided.

His Lordship said he supposed the question that was sought to be decided here was whether Ring had any power to devise at all.

Mr. Lawrence said that no Statute of Limitations could run in favour of a person who had a right to property.

His Lordship said it was for Bird to prove his right to the property, and if it was Ring's to devise the right to distress existed.

Mr. Lawrence said he proposed to call Mrs. Bryden to speak to the circumstances of the distress.

His Lordship—And to leave it to the defendant to prove his title.

Mr. McCarthy—No doubt Mrs. Ring has the fee now, but I would put it that the estate, so far as Mrs. Ring is concerned, is determined by reason of our prescription, and that is all I can say upon it.

His Lordship—Well, I don't think it is.

Mr. McCarthy—If the statute having run, assuming it for the moment to have run, against Mrs. Ring as tenant for life, if it had not run against her as tenant in fee, she is not bound by prescription against her as tenant for life, and no doubt we had no right to levy.

His Lordship—That is the position of the matter.

Mr. McCarthy—If your Lordship thinks that, so far as right is concerned—

His Lordship—The case is over.

Mr. McCarthy—Then we have nothing but the question of damages to consider.

A consultation between counsel then took place.

His Lordship—What is the difficulty?

Mr. Lawrence—We are endeavouring to come to terms in regard to other matters; my friend has made certain suggestions to me, and we are trying to get these carried out, not only to settle this matter but to settle other matters.

His Lordship—Very well. I will give you time.

Mr. Lawrence (after another long interval) said he was afraid the outstanding matters about the will and other things were too complicated, and he thought he must take the view of the jury about the damages in the action, which was a much simpler matter. Both of them had tried to bring their clients to terms, but they could not do it.

Mr. McCarthy—My client is easily brought to terms.

Mr. Lawrence—I don't think it is right to say that; you have not made a single offer in the action.

Mr. McCarthy—Now, now.

Mr. Lawrence—That is the fact; you have offered nothing, and yet you say your client is willing to come to terms.

His Lordship—Can I be of assistance?

Mr. McCarthy—I think you can materially assist me, my lord, my offers are so reasonable, in pressing them on my learned friend.

His Lordship repeated that he should be glad to give any assistance in his power.

Mr. Lawrence said they would come before his Lordship in his room with regard to the matters.

Counsel then adjourned with his Lordship to a room, and after an absence of five minutes they returned, and

His Lordship said he was very glad to tell the Jury that they would not be troubled any more in the case. The parties had agreed to leave it to him to say what damages should be awarded to the plaintiff, and he had awarded the sum of ten guineas, with costs on the High Court scale.

This concluded the business of the Assizes.