

[Chan. Rep.]

RE CAVERHILL.

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her brother-in-law, sued the defendant for breach of promise of marriage.

The defendant obtained a summons calling on the plaintiff, by her next friend, her attorney or agent, to shew cause why the rule of court admitting Alonzo Richardson to prosecute this action as the next friend of the plaintiff should not be set aside with costs, and another next friend appointed, on the ground that he was an irresponsible person; or why all proceedings should not be stayed until the said Alonzo Richardson should give sufficient security for the costs.

Contradictory affidavits were filed as to the solvency of the next friend.

J. K. Kerr shewed cause :

This next friend is not only the brother-in-law of the plaintiff, but she is living with him as one of his family, and he is, at present at least, her natural guardian. *Morris v. Leslie*, 5 C. L. J. N. S. 318 is an authority in my favor, and *German v. Elliott*, 2 C. L. J. N. S. 267 is distinguishable. There is no evidence of insolvency, even if that would be sufficient to uphold this summons: *Yarworth v. Mitchell*, 2 D. & R. 423.

W. S. Smith contra.

The case of *German v. Elliott* governs here. The next friend not being, as the defendant contends, a responsible person, should give security for costs.

MR. DALTON.—I quite agree that this man is a proper person to represent the plaintiff as her next friend, without giving the security asked for, and I should think this, even if the application were not answered on the merits, which I think it is. *German v. Elliott*, so far as it applies, is against the contention of the defendant.

The summons must be discharged—costs to be costs in the cause to the plaintiff.

Summons discharged.

CHANCERY.

(Reported for the CANADA LAW JOURNAL by T. LANGTON, M.A., Student-at-Law.)

RE CAVERHILL.*

Quieting Titles Act—Title by prescription—Evidence of length of possession—Notice to person holding paper title—Deeds.

A petitioner claiming title by length of possession must prove possession for the requisite length of time by clear and positive evidence, which should be of more than one independent witness.

In such a case, a notice prepared and signed by the Referee should be served upon the person having the paper title, if he can be found; but if not, evidence should be put in, both of search for him and his representative; and if such search prove fruitless, possession should be shewn to have been long enough against him, even though he had no notice of such possession.

A mortgage more than twenty years old appeared upon the Registrar's abstract. A discharge of this did not appear to have been registered, none was produced nor was any proof given of the mortgage ever having been discharged. It was stated on affidavit that nothing was known of the mortgagees, and that no demand had ever

been made for the mortgage debt, though nothing had been paid, and that no acknowledgment had been given within twenty years or more.

Held, that evidence should be adduced of search for the mortgagees or their representatives. That a single *ex parte* affidavit that no payment or demand has taken place, would not bar claims of mortgagees who could be served with notice. But if they could not be found, notice might be dispensed with after a great length of time, and satisfaction presumed.

[November 20, 1868.—*Mowat, V. C.*]

This was a petition by Thos. Caverhill, under the Act for Quieting Titles. The chain of title put in as a schedule to the affidavit of the petitioner, shewed the paper title to be in Oliver Grace, who purchased from the patentee in 1810, and appeared never to have parted with his interest. The next record was a deed in 1820 from one Wm. McGinnis, whose title was not apparent, to one Meigham. In 1831 the property passed by deed from Meigham to R. W. Prentice; in 1833 by deed from Prentice to Jarvis. As these three last deeds were not produced it did not appear whether or not they contained a bar of dower. In 1823 Meigham gave a mortgage to J. Spragge and Wm. Hutchinson, no discharge of which was registered. In 1839 Jarvis conveyed to Michael Crawford through whom the petitioner claimed. From that time Crawford or those claiming under him had been in possession, and previous to Crawford's possession, the lands had been a state of nature or nearly so. The land of which the petitioner had been in possession since 1863 was not an entire lot, a portion having been conveyed by Crawford to the Hamilton & Toronto Railway Co. in 1853. Crawford made an affidavit, stating that during his possession no demand had been made for any part of the mortgage debt under the mortgage from Meigham to Spragge and Hutchinson: that he never paid anything on account of the same, nor ever had given any written acknowledgment of the right of any person or persons, thereto signed by himself, or any person as agent for him: and that no demand was ever made for dower by the wives of McGinnis, Meigham or Prentice, and that he did not even know that they had wives.

MOWAT, V. C.—To make out a title by prescription where the proceeding is *ex parte*, the evidence should be clear, strong and satisfactory. It should be by more than one independent witness, and should shew that the possession was of the whole lot, as it had been decided in several cases in the Queen's Bench† that possession of part does not give a title by prescription to the whole lot. Unless the evidence for this purpose is clear, it should be given *videlicet* and before a judge. But the testimony of a single witness in the loose and general terms of Michael Crawford's affidavit would never do.

The rule hitherto acted upon, and which it seems most important to observe is to require notice to be given to the person having the paper title, where a title is claimed in opposition to it by prescription, the notice being prepared and signed by the Referee. To dispense with the necessity of this notice there should be due search for the person having the apparent paper

* We have unearthed the following judgment, which it appears has not yet been reported, and publish it for the benefit of practitioners. The points decided are important, and the case is an authority with the Referee.—*Eds. L. J.*

† See *Hunter v. Farr et al.*, 23 U. C. Q. B. 324; *Dundas v. Johnston et al.* 24 U. C. Q. B. 550; *Young et al. v. Elliott et al.*, 25 U. C. Q. B. 334.—*Eds. L. J.*