

En banc.]

PORTER v. BROWN.

[June 17.

Ejectment—Title by possession—Payment of taxes and insurance—Perverse verdict.

Defendant in an action of ejectment had a deed of the land in question, dated Jan. 8, 1903, from W.P.E., the son and sole heir of M.E., to whom plaintiff leased the land in 1871 for ten years at \$40 a year and who died after the expiration of the lease, in 1881, having paid the rent for only the first five or six years. M.E. was a sister of plaintiff. After leasing the land in 1871 she built a house upon it. Shortly after her death W.P.E., an epileptic subject, much addicted to drink and mentally weak, arranged with W.B. and his wife (the defendants) to live with and take care of him upon the place. They accordingly went with him and lived there until the death of W.B. in Jan., 1902, after which defendant continued in possession with W.P.E. until and after the commencement of the action. Defendant swore that under the arrangement with W.P.E. he was to give her the property. Plaintiff swore that after M.E.'s death he gave notice to W.P.E. that he was occupying as a tenant at will under him, and at a rental of \$100, with the privilege of having the B's as sub-tenants to take care of him and that W.P.E. agreed to this and also that the B's would pay half the taxes and W.P.E. the other half. Plaintiff also swore that the arrangement between the B's and W.P.E. was that they should board and take care of him in lieu of the rent, and that he (plaintiff) consented to this. W.P.E. had some money which plaintiff took charge of and out of which he remitted him from time to time, he testified, small amounts as he would require. Plaintiff swore that he paid the taxes with his own money during the last ten years. Defendant swore that she and her husband paid half the taxes every year for twenty-two years and that plaintiff paid the other half with money which belonged to W.P.E. No rent has been paid since the death of M.E. Plaintiff kept the building insured. In 1895 the house was damaged by fire. He collected the insurance and made the repairs. The B's moving out and returning when they were completed.

The trial judge, summing up the facts, told the jury that it would be difficult for them them "to come to the conclusion that either W.P.E. or the B's were holding in actual, open, adverse possession." The jury, however, found that both W.P.E. and the defendant herself had open, exclusive, adverse possession for twenty years prior to the bringing of the action, and a verdict was entered for the defendant.

Held, on motion for a new trial, that the verdict was not perverse but that there was no evidence to warrant the findings.

New trial.

McMonagle, K.C., for plaintiff. *Grimmer*, K.C., for defendant.