

Eng. Rep.]

ROWE v. HOPWOOD—WORSSAM v. VANDENBRANDE.

[Eng. Rep.]

plea of infancy, and a replication that the defendant ratified and confirmed the debt after he became of age.

It was proved in evidence that after the defendant attained twenty-one years the plaintiff took an account to him which contained the items and prices, and on which was already written, "Particulars of an account to the end of 1867; I certify that this account is correct and satisfactory." This the defendant signed; and in this it was alleged the ratification consisted.

The learned judge directed the jury that this was insufficient, and that they should find a verdict for the defendant, but reserved leave to the plaintiff to move to set aside the nonsuit. The statute 9 Geo. IV., c. 14, s. 5, enacts that "no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon ratification after full age of any promise or simple contract made during infancy, unless such promise or any ratification shall be made by some writing signed by the party to be charged therewith."

O'Malley, Q.C., now moved accordingly. He argued that there was a sufficient recognition, or at least evidence of an account stated. The words used need not be such that a promise can be implied from them, but it is sufficient that there should be an acknowledgment of the debt. He cited *Harris v. Wall*, 1 Ex. 122; *Hartley v. Wharton*, 11 Ad. & E. 934.

COCKBURN, J.—I think there should be no rule. The statute requires that any recognition of a debt incurred by a person under age, made after he has arrived at full age, must be in writing if any action is to be maintained on it, and therefore the effect of such written document is a question for the court, and not for the jury. There must be, in my opinion, a recognition of the debt binding on the debtor. In the present case there was an account submitted to the defendant, and when we look at the supposed recognition, we find it is only an admission that the items are properly set out, and that the sums charged for them are satisfactory in amount. This is not sufficient. We ought to have a recognition of the account as a subsisting liability. I do not think the terms here used amount to that, and therefore there should be no rule.

LUSH, HANNEN and HAYES, JJ., concurred.

Rule refused.

COMMON PLEAS.

WORSSAM v. VANDENBRANDE.

If there be adverse possession of land, that adverse possession will be interrupted (so as to cause the Statute of Limitations to cease to run as against the true owner) by the true owner entering upon the land, asserting his rights, and entirely removing that which constituted the possession of the tortious possessor. And as a matter of law it is unnecessary for the true owner to go on and show that he continued in possession.

[W. R., Nov. 21, 1868.]

This was an action of ejectment, tried on June 26th, before Keating, J., at the sittings in Middlesex, after last term. There was a verdict for the plaintiff.

To-day the court was moved for a rule to show cause why the verdict should not be entered for the defendants, on the ground that there was no evidence at the trial to go to the jury in favor of the plaintiff.

In this case the plaintiffs showed a paper title, and the defendant claimed, under the Statute of Limitations, as having had continuous adverse possession for more than twenty years.

The paper title of the plaintiff was not disputed, but the continuous possession of the defendant for twenty years was denied by the plaintiffs. The interruption on which they relied took place between nineteen and twenty years before the writ in the present action was issued. Upon that occasion those whom the present plaintiffs represent went to the land, and with implements which they had brought broke down the fence which enclosed the land, and erected a post on the close, to which they affixed a board, on which was painted a statement that any one who desired to take a lease of the land should apply to those on whose behalf the entrance had thus been made. At the time this was done the close was undoubtedly in the possession of those under whom the defendant claimed. But that possession was evinced solely by the fence.

The plaintiffs' party remained on the land three quarters of an hour. Three days after this the post and board were gone, but there was no evidence to show who had removed them, nor was there evidence of any subsequent dealing with the land by act thereupon by any one for the next five years. After that period the possession of the defendant was evinced by acts of the most unequivocal kind—namely, by the erection of buildings.

The sole question raised to-day was whether the entry just described was a mere entry, or was such a dealing with the land as amounted to taking possession so as to interrupt the adverse possession of the defendant.

Sir Robert Collier, and *Philbrick*, for the defendant. The question turns on 8 & 4 Wm. IV., c. 27, ss. 2, 3, 10. Though the plaintiffs made an entry in 1848, yet they never were in genuine possession. No notice seems to have been given to the defendant, and the entry was made behind his back, nor does it appear that the entry was made under professional advice. There was no evidence to show that those who pulled down the fence knew who put it up. *Doe d. Baker v. Coombes*, 9 C. B. 714, is a stronger case than the present. But the acts there were held not to amount to possession. The presumption from the defendant's subsequent dealing with the land is that he took possession immediately after the entry in 1848. Though no subsequent act on the land was proved earlier than 1853, yet the defendant let the land before that year. [BOVILL, C.J.—Yes, but that is only paper against paper. What you have to make out is a title by adverse possession.] *R. v. The Inhabitants of Wooburn*, 10 B. & C. 846, is in my favour also.

BOVILL, C.J.—The verdict must stand. The commencement of the defendant's title was in 1845. A fence is put up. This is the sole thing done on the land then. If this had continued, the title of the defendant would have been good. In 1848 the fence is destroyed by the true owner