

tion of this witness so completely answer the evidence now sought to be adduced that a new trial upon this ground is out of the question. This is a typical instance of the class of case in which the well known rule as to the preference to be given to affirmative evidence can safely be applied.

The witnesses who so clearly remember the residence of Lavan in Arnprior some 40 years ago give evidence which is much to be preferred to the evidence of others, no doubt equally honest and reliable, who state that he did not live there at that time. They may not have known of his residence, or, more probably, knowing it at the time, have forgotten.

I see no reason why the evidence of Murphy as to the arrangement he claims to have made with Lavan, should not be accepted. The trial Judge has accepted it, and it is quite consistent with all the surrounding circumstances, and the probabilities of the case. If it is accepted, then Lavan became caretaker for the true owners, his possession was their possession and he did not acquire possessory title.

Two matters were forcibly presented by Mr. Thompson in his very careful argument. First, he says, that this is at most an acknowledgment of title and in order to prevent the statute running, the acknowledgment must be in writing. The defect in this is that the agreement made is not relied upon as an acknowledgment. If the agreement was made then Lavan had no possession which would avail him under the statute. The possession was changed. I think further that the evidence shews that Lavan was out of possession at the time of the making of the arrangement, and only resumed possession in his capacity of caretaker.

The other question is whether the evidence of Murphy, an opposite party, is sufficiently corroborated. I think it is, by the evidence of the witness Sheriff. He states in chief that Lavan said that he was in possession of the land as agent for Cowley and Murphy; and while it is true that in cross-examination he does not repeat this expression, he does say that Lavan stated that the land was Cowley & Murphy's, and he also states that he would report the cutting of the posts to them. Taking his evidence as a whole, and in view of the fact that on cross-examination his attention was not drawn to this point, I think the Judge was well warranted in finding that the story told by Murphy was sufficiently corroborated.

The appeal fails and must be dismissed with costs.