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W. T. BYRD)

) IN THE CHANCERY COURT,

VS. NO. 89358) PART TWO,

) AT NASHVILLE.

MRS. E. J. CLEVELAND, ET AL)

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D E C R E E

This cause was heard upon the entire record and testimony of witnesses in open court from all of which the Court finds that the complainant W. T. Byrd, and his wife, Alline Byrd, who is now deceased, purchased Lot No. 20 in Cantrell's Subdivision of Lot No. 1 of the D. T. McGavock Lands in Davidson County, Tennessee. Said Lot No. 20 fronts 50 feet on the west side of Fifth Avenue, North, and extends back between lines to an alley on which it measures 50 feet. Lots Nos. 21 and 22 in said Subdivision adjoin each other and together front 100 feet on the westerly side of Fifth Avenue, North, the south line of Lot No. 21 is the north line of Lot No. 20, and the north line of said Lot No. 22 abuts on Cass Street. They also extend back approximately 150 feet to an alley. The deed to the complainant and his wife is dated the 1st day of November 1928 and was recorded on November 2, 1928, in Book 766 at page 193, Register's Office of Davidson County, Tennessee. At the time of the purchase of said Lot No. 20 said Lots Nos. 21 and 22 were enclosed in the same fence with Lot No. 20. Said Lots Nos. 21 and 22 were used as a garden spot and pasture by the vendor from whom complainant purchased Lot No. 20. Complainant went into possession of said Lots Nos. 21 and 22 at the time he purchased Lot No. 20 and continues

to remain in possession of same.

The original bill in this cause was filed on December 13, 1966, by the complainant against certain named individuals and the unknown heirs at law of E. P. Cleveland and his wife, E. J. Cleveland seeking a decree to quiet title to said property.

The defendants filed their answer and pleaded the following sections of T. C. A, to-wit:

> "28-206. Possession against persons under disability.--Where such land or interest therein is held as set out in the preceding section, no person, whether upon disability or not, nor the State of Tennessee, shall commence or sustain an action for the recovery of same in any court."

> "28-210. Action barred by nonpayment of taxes.--Any person having any claim to real estate or land of any kind, or to any legal or equitable interest therein, the same having been subject to assessment for state and county taxes, who and those through whom he claims have failed to have the same assessed and to pay any state and county taxes thereon for a period of more than twenty (20) years, shall be forever barred from bringing any action in law or in equity to recover the same, or to recover any rents or profits therefrom in any of the courts of this state; provided, that this section shall not apply to persons under twenty-one (21) years of age or to persons of unsound mind if suit shall be brought by them, or any one claiming through them, within three (3) years after the removal of such disability." (Emphasis supplied.)

The defendants allege that one of the defendants was declared a person of unsound mind on December 8, 1961, in the State of North Carolina, and submitted evidence to support said allegations which was excepted to by the complainant and which exceptions were by the Court sustained.

The Court further finds that the complainant has not paid the taxes on Lots Nos. 21 and 22 and further that no taxes have been paid by anyone on said lots since the year 1910.

It is insisted by the defendants that T.C.A. 28-210 hereinabove quoted, constitutes a bar to complainant's right of action in this cause, however this exact question has not been passed upon by the Appellate Courts of this State, although said section has been discussed in several cases. Said section of the Code was first enacted as Chapter 28, Section 3 of the Acts of 1947, at which time complainant had been in possession of said property under fence for approximately 19 years. This Court is further of the opinion that said section of the Code is limited to suits "to recover same". This suit is not brought to recover said property but only to quiet title and the Court is of the opinion said section does not bar complainant's cause of action.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that the complainant's bill be and the same is hereby sustained, and that his title to said Lots Nos. 21 and 22 be and the same is hereby quieted and he is vested with fee simple title to said lots by virtue of the laws of prescription and his open, notorious and adverse possession of said lots for more than 30 years.

It is further ordered, adjudged and decreed by the Court that the complainant shall pay the costs of the cause for which let execution issue.

CHANCELLOR

This May 28, 1969.

xc: Mr. Robert H. Polk
Mr. Lawrence Levine

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CERTIFICATE OF THE CLERK AND MASTER

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, RAYMOND L. BARRETT, Clerk and Master of the Chancery Court of Davidson County, Tennessee, do hereby certify that the foregoing is a full, true and correct copy of the decree entered the 28th day of May, 1969, in Minute Book 80, Page 486, in the cause wherein W. T. BYRD, is Complainant, and MRS. E. J. CLEVELAND, ET AL, are Defendants, Rule Number 89358, as the same appears of record and now on file in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 10th day of February, 1970, and 194th year of American Independence.

RAYMOND L. BARRETT, CLERK & MASTER

BY Pamela Lovell
Deputy Clerk and Master

IDENTIF. REFERENCE

FEB 10 11 14 AM '70
FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TENN.

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