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COMPO v. **JACKSON IRON CO.**
Mich. 1882.

Supreme Court of Michigan.
COMPO
v.
JACKSON IRON CO.
Filed June 27, 1882.

A written agreement made by a joint-stock mining company whereby the said company recognizes the right of an Indian to a fractional interest in the mining location worked by it, and containing a definite description of the land and of the interest of said Indian, and the consideration on which it rested, which was a valuable one, is a valid agreement and declaration of trust for the title to which it referred.

Where such location was held and worked under a lease from the war department, including a right of pre-emption, and a subsequent act of congress recognized the authority of the war department by providing for a transfer of its management and control of such lands to the treasury department, and in the same act provided for the survey and sale of the land, giving occupants under the war department leases a pre-emption, to be exercised during the existence of the lease, on condition that the entire tract should be purchased, the purchase of the land under this act depended on the leasehold rights, and was in pursuance of the pre-emption right thereby granted, and the act of congress ratified the lease, whether originally valid or not.

Such agreement gave him an equitable title to the undivided interest described, which the legal owners held in trust for him; and this title, after his death, passed to his daughter, the plaintiff in this suit, who could transfer or enforce it as an interest in fee in the land purchased by the company.

Where such title in plaintiff has never been disputed long enough to bar her rights, lapse of time

alone will not operate as a disseizin, either in law or in equity; and where the bill does not indicate any considerable delay since the company gave up negotiating with her to settle with her if she had rights, and subsequently denied her rights, there is enough to call upon defendant to put in a defence and leave the merits to be tried on the facts, and a demurrer to the bill was improperly sustained.

Appeal from Marquette.

West Headnotes

Mines and Minerals 260  **5.1(6)**

260 Mines and Minerals

260I Public Mineral Lands

260I(A) Reservation and Disposal in General

260k4.5 Leases by Government

260k5.1 Federal Leases

260k5.1(6) k. Assignment of

Leases. [Most Cited Cases](#)

A lease of mining land from the War Department purported to give permanent rights, including a right of pre-emption. It was thereafter affirmed by an act of Congress, which recognized the control of the War Department by providing for the transfer of the lease to the Treasury Department, and giving to occupants holding under War Department leases, conditional rights of preemption. Held, that such act ratified the lease, whether it was originally valid or not, and that one holding an agreement from the lessee, entitling him to a specified share of the land when the lessee should obtain title, had a claim which followed the lessee's purchase, which claim passed by descent or assignment.

Adverse Possession 20  **1**

20 Adverse Possession

20I Nature and Requisites

20I(A) Acquisition of Rights by Prescription in General

20k1 k. Nature and Grounds of Prescription. [Most Cited Cases](#)

Lapse of time alone does not necessarily operate as a disseisin in law or in equity.

Frauds, Statute Of 185 ⚔️127

185 Frauds, Statute Of

185IX Operation and Effect of Statute

185k127 k. Writing Subsequent to Oral Agreement. [Most Cited Cases](#)

Where the officers of an association had executed a written agreement, recognizing that an Indian was entitled to a specific portion of certain land, held by the association under a lease, which agreement was ratified and confirmed on the books of the association, and title was thereafter perfected as contemplated by a subsequent oral agreement, it was immaterial to the rights of the Indian's successors in interest that the verbal agreement to perfect the title was void under the statute of frauds.

Trusts 390 ⚔️25(1)

390 Trusts

390I Creation, Existence, and Validity

390I(A) Express Trusts

390k24 Sufficiency of Language Used

390k25 In General

390k25(1) k. In General. [Most](#)

[Cited Cases](#)

A written agreement signed by the officers of a mining association, and declaring the other party thereto, for his services in hunting ore, entitled to a specified undivided share in certain described lands held by them under lease, will be sustained as a valid agreement and declaration of trust for the designated interest in the title when that shall have been acquired by the lessee.

Trusts 390 ⚔️365(2)

390 Trusts

390VII Establishment and Enforcement of Trust

390VII(C) Actions

390k365 Time to Sue, Limitations, and

Laches

390k365(2) k. Laches in General. [Most](#)

[Cited Cases](#)

Where a trust title in plaintiff has never been disputed long enough to bar her rights, lapse of time alone will not operate as a disseisin, either in law or in equity; and, where the bill to enforce it does not indicate any considerable delay since the alleged trustee denied her rights, there is enough to call upon defendant to put in a defense, and leave the merits to be tried on the facts, and a demurrer to the bill is improperly sustained.

Ejectment 142 ⚔️128

142 Ejectment

142V Damages, Mesne Profits, Improvements, and Taxes

142k128 k. Actions for Mesne Profits. [Most Cited Cases](#)

An accounting for the past rents and profits may be limited by a shorter period than the claim to the land itself.

****901 *40** F.O. Clark, for complainant and appellant.

***41** M.H. Maynard and C.I. Walker, for defendant.

***42** CAMPBELL, J.

Compo, as assignee of Charlotte Kobogum, an Indian woman, daughter and heir of Marji Gezick, a deceased Indian, brought a bill to obtain relief under the following circumstances: Defendant is the corporate successor and under the statute subject to the liabilities of a former company originally incorporated in 1848 as the Jackson Mining Company, and afterwards changed to the Jackson Iron Company. That corporation was organized chiefly by, and obtained the mining property of, a previous unincorporated joint-stock company acting through several trustees, and known as the Jackson Mining Company. This suit is brought to secure the rights alleged to have been contracted by the original association to be given to Marji Gezick, but never formally conveyed or otherwise assured to him or to the daughter, who succeeds him. The association was made for the purpose of mining on Lake Superior. Marji Gezick discovered and made known to them

the iron mine in Marquette county, which they have always worked as their **902 mining property, and they had agreed to pay him for his services. The association having procured a war department permit, and in pursuance thereof having taken out a lease of the mining location which contained a section of land, thereupon gave to Marji Gezick a written agreement dated May 30, 1846, signed by the president *43 and secretary, which declared that in consideration of his services in hunting ores of location 593 he was entitled to 12 undivided thirty-one hundredths parts of the interest of the Jackson Mining Company in said location 593. This agreement was ratified and confirmed on the books of the company, which it is averred passed to defendant. It is also averred that a subsequent verbal agreement to perfect the title at their own expense as soon as possible and give him that interest was also ratified and confirmed and entered on the books.

An objection made to this alleged verbal agreement as void under the statute of frauds does not appear to us of much importance because by the alleged ratification it ceased to rest merely in parol, and for the further reason that as the title was actually obtained it left the original agreement, if valid, sufficient to assure the same interest. Subsequently the incorporated company by virtue of the lease was allowed to enter the land at \$2.50 an acre, and a patent was issued December, 1851. Since that time the land has been used for mining purposes and the enterprise has been very successful.

Marji Gesick, who is alleged to have been an uneducated Indian, died in or before the year 1857. The bill alleges that his rights were recognized during his life. That after Charlotte Kobogum succeeded to his interest Mr. Everett, a member of the original association and one of its trustees, saw the president of the company in New York, where the office was located, on her behalf and showed him the original agreement, and on search they found its ratification on the books, and he promised to look up the matter and settle with her if she had rights. Subsequently offers deemed inadequate have been

made for her interest, but recently the company refuses to acknowledge her rights. The defendant demurs, and relies on various grounds, including lapse of time, and various grounds of insufficiency of title shown.

The original contract was in writing, and contained a definite description of the land, and of Marji Gezick's interest *44 in it, and the consideration on which it rested, which was a valuable one. There is no difficulty that we can discover in holding this a valid agreement and declaration of trust for the title if there was any title which it referred to. It is claimed, however, that the right then existing was a mere license, and not the subject of contract or grant. It purported, however, to give permanent rights, including a right of pre-emption. It was not shown on the argument, and is not very important, in what way these lands came, as they actually did come, under the control of the war department. By an act approved March 1, 1847, congress recognized this by providing for transfer of their management and control to the treasury department. 9 Laws U.S. 147. The same law provided for their survey and sale, and gave to occupants under war department leases a pre-emption to be exercised during the existence of the lease, on condition that the entire tract should be purchased, and compliance made with the terms of the leases. There can be no doubt, we think, that the purchase of the land under this act depended on the leasehold rights, and was in pursuance of the pre-emption right thereby granted, and that the act of congress ratified the lease whether originally valid or not.

This being so, we think that whatever right Marji Gezick had in the lease followed it into the purchase and became attached to the title. There is nothing in the bill indicating that any demand was made on him to contribute his small share of the purchase money, which would be about six or seven dollars, provided the land was not paid for out of the profits, which is quite possible. This gave him an equitable title to the undivided interest described, which the legal owners held in trust for

him. This title passed to his ****903** daughter, and she could transfer or enforce it as an interest in fee, unless barred by lapse of time.

There is nothing in the bill which shows that this title has been disputed long enough to bar her rights. Lapse of time alone will not necessarily operate as a disseizin in law ***45** or in equity, and the bill does not indicate any considerable delay since the company gave up negotiating, and denied her rights. The defendant has not answered, and on the present hearing we must assume the bill to be true. There is enough in it to call upon defendant to put in a defence and leave the merits to be tried on the facts. It is possible that the accounting for past rents and profits may be limited by a shorter period than the claim to the land itself. We cannot anticipate what questions may be raised when the facts all come out.

The demurrer was improperly sustained. It must be overruled, with costs of this court and the usual costs of hearing on demurrer in the court below.

The case will be remanded, and leave given to answer in 20 days, unless time is further extended.

GRAVES, C.J., and MARSTON, J., concurred. COOLEY, J.

I agree that the bill made such a case as entitled the complainant to an answer.

Mich. 1882.
Compo v. Jackson Iron Co.
49 Mich. 39, 12 N.W. 901

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