

GILBOURNE

1979 No. 5338P



ELLEN GILBOURNE

.v.

ROBERT GILBOURNE AND PATRICK GILBOURNE

Judgment delivered by Mr. Justice McWilliam on the 24th day of June 1982

The Plaintiff claims a declaration that she is entitled to be registered as joint tenant of the lands of Cloonpasteen and Bohard described respectively on Folios 2798 and 1043, Co. Limerick, of the Register of Freeholders in the Land Registry. Her claim is made on the basis of long possession adverse to the title of the owner of the lands.

The ownership registered on the folios is that of Patrick Gilbourne (hereinafter called Patrick Gilbourne, senior) and William Gilbourne (hereinafter called William Gilbourne, junior) who are registered as limited owners under a settlement contained in the Will of William Gilbourne (hereinafter called the Testator) who died on 8th July, 1936. The folios show that the

Testator was, on first registration, registered as full owner of Cloonpasteen on 11th June, 1906, and as full owner of the lands of Bohard on 13th April, 1920. These two holdings have been described together as Belleville. The limited owners were sons of the Testator. William Gilbourne, junior, who died on 14th October, 1962, was the husband of the Plaintiff and father of the Defendant Robert Gilbourne. Patrick Gilbourne, senior, who died on 14th October, 1972, was the father of the Defendant, Patrick Gilbourne, (hereinafter called Patrick Gilbourne, junior).

William Gilbourne, junior, also owned land at Feohanagh, registered on Folio 3634, Co. Limerick. These lands are not the subject-matter of these proceedings although there was considerable reference to them throughout the hearing. They were registered in the name of William Gilbourne of Cloonpasteen on 7th June, 1913, but it has not been suggested that this William Gilbourne was not William Gilbourne, junior, and the case proceeded on the basis that William Gilbourne, junior, was the owner of these lands. There was no dwelling on these lands and, after the marriage of William Gilbourne, junior, to the Plaintiff in 1925, he lived with the Plaintiff in rented premises. After

the death of the Testator in 1936, William Gilbourne and the Plaintiff and their family moved to the house on the lands of Bohard and continued to live there until the death of William Gilbourne, junior, in 1962. The Defendant, Robert Gilbourne, the Plaintiff, one of her daughters and her youngest child, Peter Gilbourne, continued to live on the lands of Belville and work them after the death of William Gilbourne, junior.

The Plaintiff stated in evidence that Patrick Gilbourne, senior, had been left (or given) another farm at Feohanagh by his father and that he lived there.

There appears to have been some arrangement between Patrick Gilbourne, senior, and William Gilbourne, junior, with regard to the various holdings whereby Patrick Gilbourne, senior, took over the management and benefit of half of the lands of Feohanagh belonging to William Gilbourne, junior, and that William Gilbourne junior would have the use of the entire of the lands of Belville.

As no evidence was given by the Defendants and as the Plaintiff is eighty years of age, although quite alert mentally, I cannot be sure that I have interpreted the evidence correctly with regard to the ownership of the lands not the subject-matter

of these proceedings or of the arrangement between the limited owners, particularly having regard to the circumstances that the names of the Patrick Gilbournes are the same.

After the death of William Gilbourne, junior, in 1962, the Plaintiff and the Defendant, Robert Gilbourne, continued to live on the lands at Belville with two of the Plaintiff's other children. These two children had both left the lands by 1967.

Patrick Gilbourne, senior, died on 14th October, 1972, and the Defendant, Patrick Gilbourne, junior, appears to have taken over his lands, approximately one hundred acres near Limerick, and continued to use half of William Gilbourne, junior's, lands at Feohanagh. Peter Gilbourne stated in evidence that the Plaintiff continued to have the use of the other half of the lands of Feohanagh and let them to him and that he let them to other people.

In 1964, after the death of his father, the Defendant, Robert Gilbourne, married and brought his wife to live at Bohard. The Plaintiff continued to live there also but Robert managed the lands. The Plaintiff left Bohard in 1976 and went to live first with her daughter, Teresa, and then with her son, Peter, and she has been living in Charleville for the past five years. She

has not returned to Belville since.

In 1976, presumably after the Plaintiff had left the lands, Robert Gilbourne put the Belville lands up for sale. The Plaintiff and Peter Gilbourne objected and the sale fell through. Some time after this, Robert Gilbourne bought a public house in Kilkenny and went to live there although he kept control and had the use of the lands at Belville until 1978.

On 14th June, 1974, Patrick Gilbourne, junior, had instituted proceedings for the construction of the Will of the Testator and, by Order of 9th July, 1975, it was declared that William Gilbourne, junior, and Patrick Gilbourne, senior, had taken the lands as tenants for their joint lives with remainder in fee simple to the heir-at-law of the survivor. This meant that Patrick Gilbourne, junior, had become entitled to the lands at Belville in fee simple on the death of his father. This decision was appealed to the Supreme Court and the appeal was settled on 29th September, 1978, between Robert Gilbourne and Patrick Gilbourne, junior, on the terms that Patrick Gilbourne, junior, would pay the sum of £46,000 to Robert Gilbourne and that Robert Gilbourne would release all his claims to Belville.

There was also a provision that Robert Gilbourne would discontinue his proceedings against Patrick Gilbourne, junior, but I have not been given any indication as to the nature of these proceedings. The sum of £46,000 was duly paid to Robert Gilbourne in July, 1979. Although she was one of the Defendants in that action, the Plaintiff did not join in the settlement and did not execute the Consent but her Appeal was struck out on 19th July, 1979. Under these circumstances, the Plaintiff issued the present proceedings on 27th August, 1979, claiming a declaration that she is entitled to a moiety of the lands of Belville. In her statement of claim the Plaintiff relies on possession of the lands with her son Robert from 1962 until 1976, a period of fourteen years. At the hearing it was accepted on her behalf that, under the provisions of Section 15 of the Statute of Limitations, 1957, time would not start to run against Patrick Gilbourne, junior, until the death of his father on 14th October, 1972, and that time would not have run against him until 14th October, 1978, six years later.

It occurred to me that the institution of the proceedings for the construction of the Will of the Testator within that period might have an effect on the operation of the statute as

constituting a claim by Patrick Gilbourne, junior, to an estate in fee simple in possession in the lands, but it has been accepted by the parties that this is not so. It is, therefore, unnecessary for me to consider the point.

As the case was presented, the Plaintiff was only in occupation for four years after October, 1972, so that she would not have acquired title by possession under Section 49 of the Registration of Title Act, 1964, when she left the lands. On behalf of the Plaintiff it is argued that her opposition to the sale by Robert Gilbourne in 1976 constituted a continuation of her occupation of the lands in some way but I am satisfied that this is not so. The objection was to a sale by Robert, who had not himself acquired a title by possession at this stage. Undoubtedly she was making a claim to an interest in the land and succeeded in preventing the sale by Robert, but she did not pursue the matter any further and, just before Robert had been in occupation for the complete period of six years, he signed the Agreement of 29th September, 1978, releasing all claim or interest in the land to Patrick Gilbourne, junior. At that time the Plaintiff was not in possession of the lands or of any part of

them and I do not accept the further argument on her behalf that, because Patrick Gilbourne, junior, paid Robert Gilbourne approximately half of the purchase price offered on the abortive sale in 1976, there was some admission by Patrick Gilbourne, junior, that the Plaintiff had acquired title to half of the lands.

Although this disposes of the claim, two incidental matters occur to me. The lands of Feohanagh were frequently mentioned during the course of the hearing. These lands appear still to be registered in the name of William Gilbourne, junior. I have no idea what is the position with regard to them and, as I have already mentioned, I have not been told what was the nature of the proceedings brought by Robert Gilbourne against Patrick Gilbourne, junior.

With regard to procedure, a claim under the Statute of Limitations is normally raised by way of defence and, apart from Section 24 of that Statute, the provisions are so framed, i.e. on the basis of precluding claims where the appropriate period of limitation has run. Under Section 31 of the Registration of Title Act, 1964, the Register is conclusive evidence of the title of an owner appearing on the Register. Presumably, to allow



for the effect of this section on the Statute of Limitations,  
Section 49 makes provision for a person with a possessory title  
to apply to be registered as owner. Under this section the  
appropriate procedure is to make an application to the Registrar  
with a right of appeal to the Court under the provisions of  
Section 19.

*Herbert R. McWilliam.*  
23/7/82