

LUMPKINS *v.* JOHNSON.

Opinion delivered July 15, 1895.

GUARDIAN'S SALE—CONFIRMATION—of a guardian's sale by the probate court is necessary to pass title.

JUDICIAL SALES—LIMITATION—The five years statute of limitations as to judicial sales does not apply to unconfirmed probate sales.

Appeal from Randolph Circuit Court.

JOHN B. McCALEB, Judge.

STATEMENT BY THE COURT.

The appellant brought suit in ejectment to recover of appellee one-fifth of the E. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 12, township 19 north, range 2 east, and claimed title by inheritance from her grandfather.

The answer admitted that appellant inherited the land from her grandfather, but claimed title by purchase of appellant's one-fifth at sale of same by her guardian, under order of the probate court of Randolph county, and exhibits his deed made by appellant's guardian, duly acknowledged and recorded; also exhibits petition to the probate court, and order of the court for sale of the land mentioned therein. The petition, the order of the court and the guardian's deed, all describe the land as the S. $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 12, township 19 north, range 2 east, which includes only the south forty of the E. $\frac{1}{2}$ of said quarter, for which E. $\frac{1}{2}$ the appellant sues.

The sale by the guardian was never reported to, nor confirmed by the probate court.

The appellee relies upon the seven years statute of limitation. Finding and judgment for appellee, upon seven years statute of limitation. Appeal to this court.

S. A. D. Eaton for appellant.

1. The guardian's sale by the probate court never having been confirmed, it was incomplete, and no title passed. 46 Ark. 38; 47 *id.* 419; 54 *id.* 642; 55 *id.* 309. The five years statute of limitation never commenced to run, as the sale was not confirmed by the court. 53 Ark. 400.

2. The evidence is not sufficient to support the plea of limitation of seven years. 42 Ark. 300; 55 *id.* 109. Appellant and appellee were tenants in common, and the possession by one is the possession of all. 42 Ark. 300. Permissive possession cannot ripen into title. 42 Ark. 120; 33 *id.* 633.

HUGHES, J., (after stating the facts.) The guardian's sale, without confirmation by the probate court, passed no title. There is no evidence of open, notorious, adverse and uninterrupted possession for the period of seven years. The five years statute does not apply, as there was no sale, until the same was approved by the probate court. Reversed, and remanded for a new trial.
