

BUNCH *v.* BUNCH.

5-610

276 S. W. 2d 705

Opinion delivered March 28, 1955.

BOUNDARIES—WEIGHT AND SUFFICIENCY OF EVIDENCE.—Chancellor's finding as to the former location of a fence, the recognized boundary, *held* not contrary to a preponderance of the evidence.

Appeal from Mississippi Chancery Court, Chickasawba District; *C. M. Buck*, Special Chancellor; **affirmed**.

Claude F. Cooper and *Elbert S. Johnson*, for appellant.

Taylor & Sudbury, for appellee.

ROBINSON, J. This is unfortunate litigation between two brothers as to the ownership of about one acre of land the value of which, comparatively speaking, is negligible.

Appellant Milton Bunch and his brother, appellee Spencer Bunch, each own five or six hundred acres of valuable land in Mississippi County. In one tract Milton owns thirty acres, and adjoining him to the south, Spencer owns twenty-nine acres, according to the record titles. There is no fence separating the two tracts.

At one time, Milton owned the land which is now owned by Spencer, and which is involved in this litigation. In 1934 or 1935, Milton sold the land to Bud Parker who, in turn, sold it in 1941 to Spencer.

A fence had been built in 1917 and was recognized by all as the proper line dividing the two tracts of land. This fence was in existence when Spencer acquired his land in 1941, and he claims ownership to the line on which the fence was located. Milton agrees that Spencer owns to the former location of the fence, but contends that all evidence of the fence has been destroyed, and that no one can now tell where the fence was located. He also contends that the only way to determine the proper dividing line is by a survey, and that such a survey has been made which shows the true line to be several feet south of the line on which Spencer says the fence was situated.

Several witnesses testified to the effect that it is now impossible to determine the line on which the fence was located, but other witnesses say the fence ran from a sycamore stump, still in existence, to a point Spencer says was marked by a corner post which was left standing. Spencer further testified that the corner post was later replaced, with the approval of Milton, by a concrete marker.

The Chancellor held that the line now contended for by Spencer is the line where the fence was located. We cannot say the finding of the Chancellor is contrary to a preponderance of the evidence.

Affirmed.
