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mental injury as "great damage to the nerves," an inexact phrase, to say the least. It is, like so many problems in the law, a question of drawing the line. We are not helped by ancient dogmas or artificial distinctions. And it is not enough even to reach desirable results and to make good decisions. It is important that the reasons employed be sound and valid. It has truly been said that in this noisy world we cannot insure the individual absolute tranquillity. But should not this very difficulty prod us in the struggle for the maximum obtainable level? Should it not lead the law to use its exemplary effect to encourage greater respect for peace of mind?

The law in this area is in a state transition.[43] The signs are unmistakable. Recovery may be denied for mental anguish alone, but permitted for the same injury as an element of damages once a technical tort is established. Recovery may be denied when the injury is the result of negligence, but permitted when it is intentionally inflicted. Recovery may be denied when defendant and plaintiff occupy no special relationship, but permitted when the defendant owes the plaintiff a high degree of care. Each of these inconsistencies, and others, may be rationalized, but none of them is rational. They all point in one direction: toward the recognition of the emotions as a part of the person which the law can and should protect from harmful and unjustified invasion.

Science is charting new areas in its exploration of the psyche; enlightened society is moving forward with new awareness and concern. In the meantime the law is proudly bringing up the rear, serving even while it stands and waits. Gradually it too will move into the regions formerly unknown. It is only a question of time.

WILLIAM B. GOLDFARB

Good Faith and the Right to Compensation For Improvements on Land of Another

Originally at common law, a person was under no obligation to pay for unauthorized improvements made upon his land.[1] One making improvements without the owner's knowledge or consent was not entitled to compensation, even though he acted in good faith, under a bona fide belief of

[43] "The treatment of any element of damage as a parasitic factor belongs essentially to a transitory stage of legal evolution. A factor which is today recognized as parasitic will, forsooth, tomorrow be recognized as an independent basis of liability. It is merely a question of social, economic and industrial needs as those needs are reflected in the organic law." 1 STREET, FOUNDATIONS OF LEGAL LIABILITY 470 (1906). Measured by the change in social attitude and the progress of psychology, the fifty years since the above statement was made constitute an epoch. If its author is correct, the "transitory stage" should by now have given way to the predicted recognition. The fact that it has not yet done so is attributable to legal lag.

ownership. Under the civil law, and later in the equity courts, this harsh rule was modified to allow compensation for improvements made in good faith, by one in bona fide adverse possession of the land under color of title.[2] This person will be referred to hereafter as the "occupant."

The strict common law rule was modified under two well known equitable theories. One, the principle of unjust enrichment, and the other the maxim of "he who seeks equity must do equity." These theories resulted in the enactment of legislation in most jurisdictions allowing compensation to the occupying claimant. The statutes are generally referred to as "occupying claimant laws" or "betterment acts." Most of these statutes require three concurrent essentials, as do the courts of equity, in order for compensation to be granted: (1) the occupant must improve in good faith; (2) he must be in adverse possession; and (3) he must have possession under color of title. This note is concerned only with the first of these essentials, namely good faith.

NOTICE FROM RECORDS

There is a decided split of authority as to whether constructive notice, from the records, of existence of a paramount title or interest will deprive an occupant of the right to be reimbursed for his improvements, upon being ejected from the premises.[3] Or in other words, does the fact of an adverse record title preclude an occupant from reimbursement for improvments because he cannot be considered a possessor in good faith? The majority of jurisdictions have held that constructive notice will not defeat the right of the occupant to compensation;[4] that the occupant is nevertheless a possessor in good faith. This rule is applied to recorded mortgages, as well as to deeds.[5]

One test used by the courts is that of actual notice.[6] The reasoning is

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[1] Buswell v. Hadfield, 202 Ark. 200, 149 S.W.2d 555 (1941); Rezeppa v. Seymour, 230 Mich. 439, 203 N.W. 62 (1925); Feenberg v. Tulsa Chamber of Commerce, 128 Okla. 134, 261 Pac. 950 (1927).

[2] Kester v. Bostwick, 153 Fla. 437, 15 So.2d 201 (1943); Harper v. Durdin, 177 Ga. 216, 170 S.E. 45 (1933).

[3] See 68 A.L.R. 291 and 82 A.L.R. 921.

[4] States following the majority view are: Arkansas, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Tennessee, Vermont, Washington, and Wisconsin.

[5] Warwick v. Harvey, 158 Md. 457, 148 Atl. 592 (1930).

[6] Weatherly v. Purcell, 217 Ark. 908, 234 S.W.2d 32 (1950); Beard v. Dansby, 48 Ark. 183, 2 S.W. 701 (1886); Combs v. Deaton, 199 Ky. 477, 251 S.W. 638 (1923); Bragg v. McCoy, 188 Ky. 762, 224 S.W. 200 (1920); Warwick v. Harvey, 158 Md. 457, 148 Atl. 592 (1930); Brown v. Baldwin, 121 Mo. 106, 25 S.W. 858 (1893); Sequatchie Coal Co. v. Sunshine Coal and Coke Co. 25 Tenn. App. 604, 166 S.W.2d 402 (1942).

that if constructive notice would defeat the right to compensation, the instances would be very rare when the right could be invoked.[7] Actual notice is either knowledge of an outstanding paramount title, or of some circumstance from which the court or jury may fairly infer that the occupant had cause to suspect the invalidity of his own title.[8] If there was notice of some fact or circumstance that would lead a man of ordinary prudence to such an inquiry as would result in his actual notice, compensation is denied.[9]

Another test employed is that of honest belief.[10] The occupant is in good faith if he possesses under the honest belief in his right or title, and the fact that diligence might have shown that he had no title does not necessarily negative good faith.[11] Where the occupant claims through a quit claim deed, honest belief is sufficient for him to be in good faith.[12]

A minority of jurisdictions[13] hold the occupant to be in bad faith if he was on constructive notice of an adverse claim.[14] Bad faith will preclude a recovery for the improvements because good faith is a prerequisite. These courts argue that the occupant should search the records and avail himself of the means of knowledge open to him by such records; otherwise he is not in good faith.[15] Records are for public usage and knowledge, and one who shuts his eyes to things which might have been discovered upon examination cannot be considered in good faith.[16]

Notice from Deed

It is clear that where the occupant takes possession of land under a deed which shows plainly on its face that he does not have the fee, he cannot

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[7] Combs v. Deaton, 199 Ky. 477, 251 S.W. 638 (1923).

[8] Beard v. Dansby, 48 Ark. 183, 2 S.W. 701 (1886).

[9] Brown v. Baldwin, 121 Mo. 106, 25 S.W. 858 (1893).

[10] Bragg v. McCoy, 188 Ky. 762, 224 S.W. 200 (1920); Loeb v. Conley, 160 Ky. 91, 169 S.W. 575 (1914); Cleland v. Clark, 123 Mich. 179, 81 N.W. 1086 (1900); Petit v. Flint, 119 Mich. 492, 78 N.W. 554 (1899).

[11] Cleland v. Clark, 123 Mich. 179, 81 N.W. 1086 (1900).

[12] The cases which hold that persons taking by quit claim deed are not in good faith apply only to cases arising under the recording laws. See Cleland v. Clark, 123 Mich. 179, 81 N.W. 1086 (1900).

[13] States following the minority view are: Georgia, Illinois, New Hampshire, New Jersey, New York, Texas, Virginia, and West Virginia.

[14] Clark v. Leavitt, 335 Ill. 184, 166 N.E. 538 (1929); Anglin v. Pennington, 296 Ky. 142, 176 S.W.2d 277 (1943); Vincent v. Goddard 7 Ohio 188 (1836). (Here the land had a judgment lien and a land levy on it. It was held that no one could mistake these facts and the occupant cannot be said to be absolutely free from fraud and collusion.) Johnson v. Schumacher, 72 Tex. 334, 12 S.W. 207 (1888); McDonald v. Rothgeb, 112 Va. 749, 72 S.E. 692 (1911); Williamson v. Jones, 43 W. Va. 562, 27 S.E. 411 (1897); Dawson v. Grow 29 W. Va. 333, 1 S.E. 564 (1887).

[15] Dawson v. Grow, 29 W. Va. 333, 1 S.E. 564 (1887).

[16] Anderson v. Reid, 14 App. D. C. 54 (1899).

be in good faith so as to entitle him to compensation for improvements made.[17] Thus, where a deed shows plainly that only a life estate is conveyed, the purchaser cannot be in good faith.[18] The deed apparently must convey an estate which would justify the occupant thereof in making permanent improvements.[19] Even though the occupant is unaware of a defect on the face of his title paper, he is nevertheless not in good faith with respect to improvements because a purchaser of land is conclusively presumed to know what appears on the face of the deed under which he claims title.[20]

Where there is some defect with respect to the legal description on the deed an interesting result has been reached. If there is in fact no legal description on the deed, the deed is void upon its face and the grantee does not take in good faith.[21] If, however, the legal description is merely incomplete or erroneous, the grantee will be considered in good faith even though the deed is actually void upon its face.[22] Apparently the complete lack of any description would be sufficient notice to the reasonable man, so as to put him on inquiry.[23]

Ohio has a leading case in this area.[24] The grantee's title showed on its face that the land once belonged to X. The deed, prior to the one from which X took title, expressly showed an adverse claim in a third person. The supreme court held that the grantee will not be presumed to know recitals in deeds prior to the deed to his grantor. If, however, the recital in the deed to his grantor, or his own deed expressly shows an adverse claim, then the grantee will be held to have notice. Thus, Ohio holds the grantee not only to defects in his own deed, but also to any defects in the deed to his grantor. This view is somewhat stricter than the general rule in most states, which holds the grantee to defects in his own deed only.

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[17] In Bartholomew v. Rothrock, 21 Ohio L. Abs. 57 (App. 1935), the deed recited that the land be used "for grain elevator purposes only," and if not so used, it would revert to the grantor. The grantee could not recover for improvements. The same result occurred in Wood v. Conrad, 2 S.D. 334, 50 N.W. 95 (1891), where the deed contained a provision that the lots deeded were subject to a "right of redemption from a sheriff's sale." This was express notice that title was not absolute.

[18] Stewart v. Matheny, 66 Miss. 21, 5 So. 387 (1889).

[19] Beardsley v. Chapman, 1 Ohio St. 118 (1853). Bartholomew v. Rothrock, 21 Ohio L. Abs. 57 (App. 1935); Seibel v. Higham, 216 Mo. 121, 115 S.W. 987 (1889); in Scott v. Battle, 85 N.C. 184 (1881), the husband of the grantor did not join in the deed, making it void in law. The grantee was held not to be in good faith because he is charged by implication of law with knowledge of the invalidity of his own title.

[20] Stewart v. Matheny, 66 Miss. 21, 5 So. 387 (1889).

[21] Simpson v. Johnson, 44 S.W. 1076 (Tex. Civ. App. 1898).

[22] Bassett v. Sherrod, 13 Tex. Civ. App. 327, 35 S.W. 312 (1896).

[23] The reasonable man test was used by the court in Wood v. Conrad, 2 S.D. 334, 50 N.W. 95 (1891).

[24] Beardsley v. Chapman, 1 Ohio St. 118 (1853).

NOTICE FROM WILL

There are not many cases considering the question of the good faith of the grantee when his title descended to him directly or indirectly by devise. Where the title passed to the grantee directly by devise, any defect in the will should probably be construed under the same rules as defects in a deed, where the land passed by grant. Therefore, if the will shows plainly on its face that the grantee does not have clear title, he should not be held to be an occupant in good faith with respect to improvements made. This would hold true even though the occupant was unaware of the defect.[25] Where, however, the will is declared void after improvements are made by an occupant in good faith who originally took under the will, he is entitled to compensation.[26]

When title to the property descends indirectly by devise, the problem is a different one. This situation arises when the occupant's grantor takes title by devise. If the deed to the occupant refers to the will by which the grantor got title, it has been held that the occupant will be on notice of any defects in that will.[27] Even where there is no mention of the will in the deed, a court has held the occupant not to be in good faith where the will showed a defect. He was on constructive notice of the provisions of the will, and it was his duty to examine the records.[28]

KNOWLEDGE OF TITLE IN ANOTHER

As a general rule, the occupying claimant must believe he owns the fee simple title to the land in order to be considered in good faith. He will not be entitled to compensation for improvements made when he thinks he is a possessor of an interest less than the fee. Thus, where one enters upon land under a title, but with knowledge that he is obligated to reconvey the land upon a certain contingency, he will not be allowed compensation when the contingency eventuates.[29] The occupant under such conditions should reasonably expect that his title might be defeated, and therefore he makes

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[25] See note 17, *supra.*

[26] Bloom v. Strauss, 70 Ark. 483, 69 S.W. 548 (1902).

[27] Walker v. Quigg, 6 Watts. 87 (Pa. 1837). Here, occupant took a deed which referred to the will by which the grantor got title. Had occupant looked up the will, he would have seen the defect in his title. He was held not to have sufficient good faith to recover for improvements.

[28] Clark v. Leavitt, 335 Ill. 184, 166 N.E. 538 (1929). It was pointed out in this case, however, that the occupant will be held to notice of the provisions of the will by which his grantor took title only if the will is probated in the same county in which the land is located. Also, Illinois is a jurisdiction which follows the minority rule with respect to constructive notice from the records. Query, whether the same result would be reached under the majority rule, which holds the occupant to be in good faith regardless of the records, where he has no actual notice.

[29] Rogers v. Timberlake, 223 N.C. 59, 25 S.E.2d 167 (1943).

improvements at the risk of losing them. Furthermore, the mere hope of someday securing the title will not be sufficient to give the occupant the necessary good haith to enable him to receive compensation.[30]

Under certain circumstances, however, the courts have made exceptions to the strict rule requiring the occupant to believe he owns the fee in order to be in good faith. One exception has occurred where the occupant made improvements at the time when he held possession under an agreement to purchase. One reason why he was allowed compensation was the fact that he was justified in entertaining the belief that legal title would ultimately be conveyed to him.[31]

Another exception has been granted when the occupant improved land under an agreement with the life tenant that the land would eventually become his.[32] The occupant in good faith believed the life tenant to be the owner of the fee. The court required compensation by the remainderman because the occupant was justified in entertaining the belief that the fee would be conveyed to him, and therefore, he was in good faith.

Whether or not the occupant is in good faith when he knows that the fee is in another is demonstrated in cases involving a husband-wife situation.[33] When the wife makes improvements upon land, title to which she knows is in her husband, she will be precluded from compensation if the husband sells the land. This result occurs because the wife cannot be in good faith when she knows she does not own the fee. Even the hope or expectation of eventual acquisition of the title will not be sufficient. In some cases, it is obvious that this rule will work a hardship on the wife.

Mistake as to Boundary

Where improvements are made on lands actually owned by another, the general rule allows the improver to recover if the mistake was one which could not reasonably have been avoided.[34] This problem usually occurs when the owner of land mistakenly constructs a building or makes some other improvement on the land of his neighbor. In other words, the

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[30] Gibson v. Hutchins, 12 La. Ann. 545 (1857). (Occupant denied compensation because of lack of good faith, where he was a mere settler with the hope of securing a preemption.)

[31] Preston v. Brown, 35 Ohio St. 18 (1878). Another reason why compensation was allowed here under the theory of unjust enrichment was because the true owner of the legal title stood by and watched the occupant improve the land without warning him.

[32] Folsom v. Clark, 72 Me. 44 (1881). See also Fee v. Cowdry, 45 Ark. 410 (1885).

[33] Kelly v. Kelly, 293 Ky. 42, 168 S.W.2d 339 (1943); Bryan v. Councilman, 106 Md. 380, 67 Atl. 279 (1907).

[34] Wacker v. Price, 70 Ariz. 99, 216 P.2d 707 (1950); Walton v. Sikes, 165 Ga. 422, 141 S.E. 188 (1927); Gregory v. Kedley, 185 So. 105 (La. App. 1938); Fain v. Nelms, 156 S.W. 281 (Tex. Civ. App. 1913).

owner was mistaken as to the true location of the boundary line between his property and that of his neighbor. The test of whether or not the mistake was bona fide seems to be whether the owner acted reasonably in believing that he owned the land.[35] If the reasonable man of ordinary prudence likewise would have been misled, then the owner would be in good faith, and compensation for his improvements would be allowed.

When a house is built partly on a neighbor's property due to an honest mistake, another factor which will add to the determination of the occupant's good faith is the action of the neighbor. If he merely stands by and permits the improvements knowing of the error, few courts will allow the neighbor to take over the improvement without compensation.[36] If the neighbor makes any positive acts or declarations which in any way influence the occupant's action, this is further evidence of a reasonable mistake, and the courts will allow compensation because the occupant was in good faith.[37]

A problem occurs when the deed by which the occupant claims title contains a description of a lot other than the one which the occupant intended to buy. This mistake may arise when a large tract is being developed, and a different sublot is described in the deed than the one intended to be purchased. When the occupant builds a house on the lot he thought he owned, but in fact did not, his mistake has been considered reasonable, so that he is held to be in good faith and entitled to recover.[38]

Other courts appear to be somewhat stricter in their definition of good faith in the area of mistake as to boundary. A federal court sitting in Kentucky held that one who mistakenly drilled for oil on the property of another was not entitled to compensation because he did not exercise the diligence of a reasonable man in attempting to discover the boundary line.[39] It has even been classified as "culpable negligence" for one to construct a building on another's lot.[40] The reasonable man would obtain a survey map and locate the lot thereon the courts have reasoned. But this reason-

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[35] Fain v. Nelms, 156 S.W. 281 (Tex. Civ. App. 1913), where the court applied this test and allowed recovery where there was a mistake in a survey.

[36] Stewart v. Matheny, 66 Miss. 21, 5 So. 387 (1889); Preston v. Brown, 35 Ohio St. 18 (1878).

[37] Karpik v. Robinson, 171 Minn. 318, 214 N.W. 59 (1927). Furthermore in Walton v. Sikes, 165 Ga. 422, 141 SE. 188 (1927), the court allowed full compensation to one who completed construction of a building after he had been warned by the owner that he was building over his line. The reason for full compensation was that the completion was necessary in order to preserve and make useful and valuable the building.

[38] Gregory v. Kedley, 185 So. 105 (La. App. 1938).

[39] Kentucky Electric Power Co. v. Norton Coal Mining Co., 93 F.2d 923 (6th Cir. 1938).

[40] Camden, Atlantic & Ventnor Land Co. v. Mason, 91 N.J. Eq. 25, 108 Atl. 778 (1919).

ing seems to be beyond the spirit of good faith within the meaning of the betterment statutes.

In other cases involving mistakes as to boundary lines the courts refuse compensation on the ground of bad faith in not employing a surveyor to ascertain the correct line before construction begins. One court has said:

> If he [the occupying claimant] failed to employ the legal means of information as to his limits, and intruded upon the land of another, he must pay the penalty of his own folly.[41]

Where, however, the surveyor has made a mistake in the survey, the courts allow compensation,[42] unless the true owner of the neighboring land has warned the occupant of the error before construction.[43] The reason for allowing compensation to an occupant who relied on a mistaken survey, is that he was probably justified in relying on the reputation, trustworthiness and competency of an experienced survey or surveyor.[44]

Kowledge of Own Title Defect

An occupying claimant who improves land with knowledge that he does not own the fee simple title is not usually entitled to compensation because he is in bad faith.[45] The test used by the courts is whether or not the occupant improved the land under the honest belief he owned the fee.[46] He is also required to have based this honest belief on reasonable grounds.[47] So that when one enters land under a title knowing of an obligation to reconvey the land upon a certain contingency, he will not be entitled to compensation for improvements because he had no reasonable grounds for an honest belief in the validity of his title. A reasonable man would not have improved under such circumstances.

There is no doubt that if the occupant knows he has only a life estate, he cannot recover compensation for improvements because this relief is only given to those honestly believing they own the fee.[48] Even when the occupant purchased the land originally believing he had the fee, but later learned of a defect in his title through conversations with others, he cannot

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[41] Sartain v. Hamilton, 12 Tex. 219, 223 (1854).

[42] Wacker v. Price, 70 Ariz. 99, 216 P.2d 707 (1950).

[43] Foltz v. Alford, 102 Ark. 191, 143 S.W. 905 (1912).

[44] Fain v. Nelms, 156 S.W. 281 (Tex. Civ. App. 1913).

[45] Beard v. Dansby, 48 Ark. 183, 2 S.W. 701 (1886); Warwick v. Harvey, 158 Md. 457, 148 Atl. 592 (1930).

[46] Rogers v. Timberlake, 223 N.C. 59, 25 S.E.2d 167 (1943); Smith v. Vankirk, 76 N.E.2d 924 (Ohio App. 1945).

[47] Rogers v. Timberlake, 223 N.C. 59, 25 S.E.2d 167 (1943).

[48] Graves v. Bean, 200 Ark. 863, 141 S.W.2d 50 (1940).

recover.[49] The test is whether or not the occupant knew of the defect at the time the improvements were made.

The occupant will likewise be denied compensation where he improves land, the title to which he knows is in dispute.[50] He will not have the requisite good faith if he knows this fact, even if he, in good faith, believes his title is superior. He must be wholly ignorant of a title dispute.

If the occupying claimant claims title only by an oral agreement, in which there was no written contract or deed running to him, he will not be in good faith.[51] The same rule is applied when the contract is written, but is only executory.[52] Furthermore, there can be no good faith if one of the principals claiming title as the occupying claimant was also a principal of the seller. This situation occured in an interesting Michigan case.[53] X was the largest stockholder of an insolvent bank, which made a voidable sale of property to K Company. X was also a trustee and held stock as such in the K Company. The Company made improvements on the property, but could not recover compensation therefor because it reasonably should have known of the defect in title through X.

When the occupant is actually a tenant in common with others, but thinks he holds the entire fee, he is usually held to be in good faith and entitled to compensation because he was acting under an honest belief that he held the fee.[54] But, if the occupant knows of his tenancy in common,[55] or knows facts from which he should suspect such a title,[56] he will not be in good faith.

KNOWLEDGE OF ANOTHER'S CLAIM

The general rule is that when the occupant is aware of the true character of his title, and that title is not in him, he will not be acting in good faith in

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[49] Williams v. Beckmark, 150 Neb. 100, 33 N.W.2d 352 (1948); Smith v. Vankirk, 76 N.E.2d 924 (Ohio App. 1945). (Occupying claimant could not collect for improvements made after he had learned of his title defect through conversations with his mother.)

[50] Etherington v. Bailiff, 334 Mich. 543, 55 N.W.2d 86 (1952).

[51] Truslow v. Ball, 166 Va. 608, 186 S.E. 71 (1936).

[52] Hollis v. Smith, 64 Tex. 280 (1885). *But see* Preston v. Brown, 35 Ohio St. 18 (1878), in which compensation was allowed because the occupant was justified in the belief that legal title would ultimately be conveyed to him.

[53] Schultz v. Kalamazoo Improvement Co., 284 Mich. 305, 279 N.W. 521 (1938).

[54] Youmans v. Youmans, 128 S.C. 31, 121 S.E. 674 (1924); Johnson v. Pelot, 24 S.C. 255 (1885); Buck v. Martin, 21 S.C. 590 (1884).

[55] Youmans v. Youmans, 128 S.C. 31, 121 S.E. 674 (1924); Crest v. Jack, 3 Watts. 238 (Pa. 1834); In Taylor v. Foster, 22 Ohio St. 255 (1871), the occupant was not in good faith because he had knowledge of his tenancy in common, even knowing of an express contingency that the entire fee would pass to him if the other tenant died without issue.

[56] Wheeler v. Wannamaker, 24 Ohio N.P. (N.S.) 101 (Putnam Com. Pl. 1921).

making improvements thereafter.[57] Compensation will not be awarded to him in such a situation, even if the true owner stands by and watches the improving.[58] If the occupant is advised of the consequences of making improvements, together with his knowledge of the title, a stronger case will be made out against him.[59]

Compensation, however, is not denied in all cases where the occupant has knowledge of another claiming title.[60] If the occupant is cognizant of the claim of another, he may nevertheless be in good faith if he has reasonable and strong grounds to believe that his title is sounder.[61] This situation usually arises where the occupant hears of another's claim, but believes his own claim superior. He has likely made an innocent mistake in law in construing his own title. It has been reasoned that it would be going too far to charge the occupant with the consequence of not properly understanding the nature of his title, or the character of the evidence by which it might be sustained.[62]

The mere fact that the occupant hears that another is claiming title to the property will not prohibit him from being in good faith. This is especially true if the alleged claimant takes no steps to assert his right,[63] or if the improvements are considered as repairs.[64]

When a railroad makes improvements on land of another, and thereafter proceeds to appropriate it under the power of eminent doman, it will nevertheless be required to pay the owner the value of the land with the improvements.[65]

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[57] Steel v. Smelting Co., 106 U.S. 447 (1882); Barlow v. Bell, 1 A.K. Marsh. 246 (Ky. 1818). This rule also applies where the occupant is a lessee, and he has knowledge of a prior valid lease to others. See Cobbett v. Gallagher, 339 Pa. 231, 13 A.2d 403 (1940).

[58] Steel v. Smelting Co., 106 U.S. 447 (1882).

[59] Barlow v. Bell, 1 A.K. Marsh. 246 (Ky. 1818).

[60] An early Kentucky case held the good faith factor was required only when the occupying claimant was himself the plaintiff, so that where lands were improved by one having notice of a prior equity, he was nevertheless allowed compensation in a suit by the true owner. See Pugh v. Bell, 2 T.B. Mon. 126 (Ky. 1825).

[61] Sartain v. Hamilton, 12 Tex. 219 (1854).

[62] Harrison v. Castner, 11 Ohio St. 339 (1860).

[63] Griffiths v. Ogle, 6 Tenn. App. 695 (1928). Mere knowledge of another's claim of title to land "in the vicinity" was not sufficient to put occupant on notice in Greer v. Vaughn, 96 Ark. 524, 132 S.W. 456 (1910).

[64] In Jackson v. Ludeling, 99 U.S. 513 (1878), occupant bought a dilapidated railroad under circumstances that would show him to be in bad faith. He was entitled to recover for improvements he made thereon, however, because the nature of the improvements was so similar to repairs.

[65] Graham v. Connersville and New Castle Junction Ry. Co., 36 Ind. 463 (1871).

KNOWLEDGE FROM PENDING LITIGATION AND FINAL JUDICIAL DECREES

Where the occupant has knowledge of pending litigation involving the title to the property which he occupies, he will not be in good faith regarding improvements.[66] And this rule applies, whether or not the lawsuit was pending at the time the occupant went into possession under color of title.[67] Furthermore, the courts are not concerned with whether or not the occupant himself is a party to the litigation. It is enough if he has knowledge of the litigation before improvements are made, to hold him in legal bad faith. Any other rule would be inequitable with respect to the true owner, because he might be improved out of his right and title to the property.[68]

The type of lawsuit pending is not significant either. The strict rule of no compensation because of the lack of good faith has been applied to actions in partition[69] and ejectment.[70] Even in a situation where the occupant purchased property from an heir, pending final administration of the estate from which the property passed, he was not entitled to compensation as against a later purchaser of the legal title at an administrator's sale.

When improvements are made during the pendency of an appeal from a judgment, the rule is followed religiously once again. It does not appear inequitable to refuse compensation to the occupant for whom judgment went adversely in the lower court, because he should have good reason to believe his title unsound. The courts have so held.[71] But, where judgment was awarded in favor of the occupant, reason would deduce that the rule might break down.[72] The lawsuit is technically still pending, and therefore an occupant should not be permitted to improve without the risk of the judgment's being reversed and no compensation being allowed.

When the occupant has notice of a final judicial decree in his favor, he may rely on that, and improvements he makes thereafter will be in good faith, so that he may recover compensation therefor. This problem might arise where the occupant has purchased the property at a judicial sale.

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[66] Brandon v. Stone, 162 S.W.2d 83 (Mo. App. 1942); Cobbett v. Gallagher, 339 Pa. 231, 13 A.2d 403 1940).

[67] In Scott v. Molter, 149 S.W.2d 642 (Tex. Civ. App. 1941), the court said that one purchasing land knowing of a lawsuit pending in regard to such land, was actually purchasing a lawsuit. He cannot be in good faith with respect to improvement until final determination that title is good in him.

[68] Cobbett v. Gallagher, 339 Pa. 231, 13 A.2d 403 (1940).

[69] Youmans v. Youmans, 128 S.C. 31, 121 S.E. 674 (1924).

[70] First Nat. Bank Bldg. Co. v. Riddle, 77 Okla. 143, 187 Pac. 479 (1920).

[71] Norton v. Davis, 13 Tex. Civ. App. 90, 35 S.W. 181 (1896).

[72] Taylor v. Belcher Loan and Mortgage Co. 265 S.W. 403 (Tex. Civ. App. 1924).

Ordinarily great confidence is placed by the public in such a sale, in the belief that the purchaser is getting a good title.[73] If the judgment on which the judicial sale is based is later reversed, voiding title in the purchaser, he will nevertheless have the requisite good faith and be entitled to compensation for improvements made in the interim.[74] However, where improvements are made after a foreclosure decree is entered against the occupant, he will not be in good faith even where he sincerely thought that the decree was invalid.[75]

An occupant under title is justified in relying on a judgment which declared a title in another to be void. If the decision is later reversed, and the occupant put out of possession, he may recover compensation, for he was justified in relying on a judicial decree, not pending appeal at the time.[76] An occupant is even justified in relying on a judge's off-hand opinion as to his right to make improvements.[77]

There is a problem involving lis pendens. If the occupant purchases property on which there is pending litigation unknown to him, but recorded under provisions of lis pendens, he should nevertheless be in good faith.[78] This view would follow the reasoning of the majority view in the recording cases, discussed previously.[79] The test of actual notice, if applied, would find the occupant in good faith, as would the test of whether or not he had an honest belief that his title was clear.

CONCLUSION

It is readily apparent that good faith must be determined in most situations from a complete understanding of the facts of each case. One requisite, however, applicable in all cases, is that the occupant must be under an honest belief that he owns the legal title. And this belief usually must be founded upon such reasonable grounds as would lead a man of ordinary prudence to entertain it. Thus, the term good faith is not used in the technical sense as applied to conveyances.

Actual notice of a title defect is required in most jurisdictions before compensation will be denied. This may include notice from obvious de-

[73] McDonald v. Rankin, 92 Ark. 173, 122 S.W. 88 (1909).

[74] Kidd v. Roundtree, 285 Ky. 442, 148 S.W.2d 275 (1941).

[75] Anderson v. Connolly, 310 Mass. 5, 36 N.E.2d 404 (1941).

[76] Gaither v. Hanrick, 69 Tex. 92, 6 S.W. 619 (1887).

[77] Rowe v. Arnett, 241 Ky. 768, 45 S.W.2d 12 (1931).

[78] McDonald v. Rankin, 92 Ark. 173, 122 S.W. 88 (1909), so holds. The reasoning was based on the fact that both the Betterment Act and the doctrine of lis pendens were founded upon public policy but that the act should control because the legislative will should not be submerged by a common law doctrine. *But see,* Eppenauer v. Ohio Oil Co., 128 F.2d 363 (1942), which is contra.

[79] See notes 3 to 12, *supra.*