

Date of Meeting: October 23-24, 1959

Date of Memo: October 14, 1959

Memorandum No. 2

Subject: Study No. 42 - Trespassing Improvers

Attached is a rough draft of a statute relating to trespassing improvers. This statute is intended to reflect the decisions of the Commission as to the basic policy to be set forth in a statute in this field.

The definition of "constructive notice" in Section 2(1)(c) of the attached rough draft is taken from Section 19 of the Civil Code. However, Section 19 of the Civil Code has been adjusted so that filing for record does not give "constructive notice." Thus the cases interpreting Section 19 of the Civil Code (other than the cases on recording) will also apply to the interpretation of Section 2(1)(c) of the attached rough draft.

Respectfully submitted

John H. DeMouly
Executive Secretary

October 1, 1959

ROUGH DRAFT STATUTE - TRESPASSING IMPROVER

Section 1.

(1) When one person has trespassed upon and improved the land of another, an action for appropriate relief may be brought by either against the other.

(2) Subject to Section 2 of this Article, in an action under this section the court shall decree such relief as will achieve as fair and equitable an adjustment of the interests of the parties as is possible under the circumstances and, to this end, the court may award relief including but not limited to one or more of the following:

- (a) Judicial sale of the improved land and division of the proceeds.
- (b) Sale of the improvements to the landowner.
- (c) Sale of the land to the improver.
- (d) An order that the parties be made tenants in common of the land and improvements.
- (e) An order that the improvements be removed from the land.
- (f) Forfeiture of the interest of the improver in the improvements.
- (g) Imposition of an equitable lien on the land or improvements, or both.
- (h) Damages.
- (i) An award of the reasonable value of the use and occupation of the land.

(j) An award of attorneys' fees.

(3) Any person asserting an interest in the land or the improvements may be made a party to an action under this section and, subject to Section 2 of this Article, the court shall decree such relief as will achieve as fair and as equitable a protection of his interest as is possible under the circumstances.

(4) All proceedings under this section shall be tried by the court sitting without a jury.

Section 2.

(1) For the purposes of this section:

(a) An owner is "at fault" if he (i) has actual knowledge that he owns the land, and (ii) has actual knowledge that the trespasser is improving the land and (iii) fails to warn the trespasser that he is trespassing.

(b) A trespasser is "at fault" if he has actual or constructive notice that the land is owned by another person.

(c) A trespasser who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to the fact that land is owned by another person has "constructive notice" of that fact in all cases in which, by prosecuting such inquiry, he might have learned such fact; but, for the purposes of this section, information contained in a public record is not information of which a person has actual notice unless the person actually examined the record or otherwise acquired actual knowledge of the information.

(2) As between an owner who is not at fault and a trespasser who is not at fault, in an action under Section 1 of this Article the court shall decree such relief as will protect the owner against loss but, insofar as possible, avoid otherwise enriching him at the expense of the trespasser.

(3) As between an owner who is not at fault and a trespasser who is at fault, in an action under Section 1 of this Article the court in giving such relief as is appropriate under Section 1 of this Article shall protect the owner against loss and, in addition, may award exemplary damages to the owner or forfeit the interest of the trespasser in the improvements to the owner, or both.

(4) As between an owner who is at fault and a trespasser who is not at fault, in an action under Section 1 of this Article the court shall decree such relief as will protect the trespasser against loss but, insofar as possible, otherwise avoid enriching him at the expense of the owner.