

August 27, 1959

TO: CALIFORNIA LAW REVISION COMMISSION
FROM: THOMAS E. STANTON, JR.
RE: GOOD FAITH OR "TRESPASSING" IMPROVER

Attached is a draft of my suggestion as to a statute on the above subject.

The statute contemplates that section 1013.5 of the Civil Code would not be repealed.

I submit the following arguments in support of the approach represented by this suggestion:

1. The approach is consistent with the law presently applicable to accessions to personal property (Civil Code, sections 1025 - 1033). In my opinion, the problems involved in accessions to real property are no more complex than those involved in accessions to personal property.

2. In contrast, I have not found any instance of a "relief oriented" statute in the Civil Code. In my opinion, the statute presently under consideration by the Commission would represent a substantial departure from the existing scheme of our law -- for which, frankly, I can see no substantial reason.

3. A "relief oriented" statute has several substantial disadvantages, among which are the following:

a. It would encourage litigation. The right given is not "to remove an improvement," or "to pay for the improvement in return for clear title to the whole," or "to pay for the land in return for a deed," but it is a right to bring a law suit, at the end of which (perhaps as much as five years in the future) one of the above substantive rights would be established. While the parties could still adjust their respective rights without litigation, the party who had the burden of going forward with the suit would be at a bargaining disadvantage. Also, the parties would be encouraged to spend their time speculating as to which would come off the better before a superior court judge rather than concentrating on the real point at issue; namely, the respective values of the improvements and the land.

b. It places too much discretion in the trial judge. The trial court is given no rules to apply in adjusting the "equities" of the parties; and there are no rules to guide an appellate court in reviewing the judgment below. In my judgment, based on my observation of the manner in which justice is dispensed in the trial courts, this is a very dangerous thing; and in adopting such an approach, the Commission would be sponsoring a highly undesirable reform, pregnant with the possibility of inequitable results.

Add a new Section 1013.6 to the Civil Code providing as follows:

"Section 1013.6

(a) If improvements affixed to the land of another under the circumstances described in Section 1013.5 cannot be removed, or if the aggregate of the value of the improvements after removal and the value of the land would be substantially less than the value of the land as improved, the owner of the land may elect either: (1) to acquire the improvements by reimbursing the person who affixed them for their value, less any sum due to the owner from such person for the use and occupation of the land, or (2) to convey the land to such person upon payment to the owner of the value of the land without the improvements plus any sum due to the owner from such person for the use and occupation of the land.

(b) If the owner elects to acquire the improvements pursuant to this section, title to the improvements shall vest in the owner upon payment to the person who affixed the improvements of the sum specified in subsection (a) of this section and such person must execute and deliver to the owner a conveyance of such improvements, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property.

(c) If the owner elects to convey the land to the person who affixed the improvements, he shall serve written notice of such election upon such person and if, within 30 days after the service of such notice, such person shall pay to the owner the sum specified in subsection (a) of this section, the owner must execute and deliver to such person a conveyance of the land, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property.

If such sum is not paid to the owner within such period of 30 days, title to the improvements shall vest in the owner and the person who affixed the improvements must execute and deliver to the owner a conveyance of the improvements, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property.

(d) If the interest of the owner in the land, or the interest of the person who affixed the improvements in such improvements, is encumbered, the amount payable to the owner or to such person, as the case may be, shall be first applied to the discharge of such encumbrance.