#42 5/6/63

Memorandum 65-17

Subject: Study No. 42 - Trespassing Improvers

At the last meeting the Commission directed the staff to prepare a synopsis of the applicable law in related areas that impinge upon the problems involved in the trespassing improver situation. This is presented in Exhibit I (pink). In the interest of confining this memorandum to questions for Commission consideration, the exhibit also contains a discussion of the relevancy of the solutions in related areas to the problems involved in the trespassing improver situation. It will suffice here to note only that the law seems to be sufficiently developed in other areas to lend logical force to the suggestion that the single area that ought to be dealt with at this time under our current authorization is the trespassing improver situation.

The Commission also directed the staff to present examples of betterment statutes that have been enacted in other states. Four of these are presented in Exhibit II (yellow). They follow a general pattern found in most of such statutes in that, as a practical matter, the owner is given the option either of paying for the improvement or selling the land to the improver (with a right to recover the improved land without compensation for the improvement only when the improver fails to purchase the land upon the owner's exercise of this option). One important deviation from this scheme is illustrated in Section 3-1509 of the Indiana statute. This declares the owner and the improver to be tenants in common of the improved property as their respective interests appear therein. This is quite similar to the suggestion made in the previous memorandum and supplement on this subject.

As mentioned in the previous memorandum on this subject, the general rule applicable to the landowner-trespassing improver situation is that, except for removal rights, improvements belong to the owner of the land. The principal deficiency in the existing law is that, as a practical matter, setoff is the only remedy available to a trespassing improver where removal is impossible. It seems appropriate, therefore, that the Commission should consider two principal questions.

First. Where removal is possible, should any additional remedy be accorded a trespassing improver?

Second. Where removal is not possible, should any additional remedy be accorded a trespassing improver?

If the Commission determines that any additional remedy should be provided in either or both of these situations, it is necessary to consider (without regard to the type of remedy to be fashioned) the standard of conduct to which any remedy attaches.

Bad faith improver. No statute or case has been found where relief of any kind has been accorded to a trespasser in bad faith who improves the property of another. The principle underlying the common law reflected in Civil Code Section 1013--that an owner should not be "improved" out of his property ownership--applies with force to the bad faith improver. In fact, examples are numerous in the encroachment cases where relief is denied to an intentional encroacher. Thus, while the court will balance equities between an unintentional encroacher and an adjoining landowner, and award appropriate relief (either granting an injunction to remove the encroachment or granting the adjoining landowner damages for the encroachment), an injunction requiring removal always is appropriate if the encroachment is intentional without

regard to cost of removal or the absence of substantial damage to the adjoining landowner. Agmar v. Solomon, 87 Cal. App. 125 (1927). There is substantial support also for the proposition that the encroacher must not have been negligent. See, e.g., Christensen v. Tucker, 114 Cal. App.2d 554 (1952). It seems appropriate that no relief be provided a person who has no indicia of right to improve the property of another and knowing that he has no interest whatever in the property, nonetheless, proceeds with an improvement.

Good faith improver. All betterment statutes (see examples in Exhibit II) require good faith on the part of the improver. In addition, many of these statutes require some indicia of ownership, such as by government grant, recorded deed, or proof of the payment of consideration. Each of these varying standards appears to be no more than a means of defining exactly who is a "good faith" improver. Should a subjective or an objective standard apply? Does a person act in good faith if he actually believes he owns the property even though the belief was unreasonable under the circumstances? Is it more appropriate to require that he acted as a prudent man? Is the standard stated in Section 1013.5 a sufficient standard to define a good faith improver? A "person, acting in good faith and erroneously believing because of a mistake either of law or fact that he has a right to do so, affixes . . . ."

Owner. The conduct of the owner may have a bearing on the standard of conduct to be applied in defining the improver. For example, a subjective standard may be appropriate to define a good faith improver where the owner is at least partially responsible through his own neglect or affirmative conduct. On the other hand, an objective standard might be appropriate in

dealing with an innocent owner. Hence, consideration should be given to defining the owner's conduct for the purpose of determining the standard to be applied to the improver and, incidentally, for the purpose of determining the availability to the owner of alternative forms of relief.

Mortgages, trust deeds, conditional sales contracts, etc. Third parties to a trespassing improver situation all have substantial rights under existing law. Materialmen's and mechanic's liens may be enforced against the improved property notwithstanding the absence of any interest of the improver himself in the property. In other words, the existing lien law provides substantial protection to third persons involved in the trespassing improver situation. Because of the complexities of the general lien law, however, there are various priorities between lienholders that substantially affect their rights. Is it necessary to provide specific remedies for third parties in addition to remedies presently provided?

Remedies. If the Commission determines that some additional form of relief ought to be provided for the trespassing improver and, possibly, for third parties, what relief should be available?

With respect to removable improvements, the right of removal presently provided is a valuable right and appears to be wholly adequate to protect both the owner's and the improver's respective interests. However, where removal is impossible or, perhaps, where removal would destroy either the usefulness of the land or substantially destroy the value of the improvement standing alone, the present right of setoff might be considered an inadequate remedy to protect an innocent improver. By the same token, however, the so-called betterment statutes go too far in forcing the owner either to buy the improvement or to sell his land. A more logical result either in lieu of or in

addition to the option presented the owner under the typical betterment statute would seem to be like that provided for in the Indiana statute and suggested in the previous memorandum and supplement, namely, that the owner and the improver own the improved property as tenants in common. It seems appropriate to guarantee to the owner, however, certain minimum protection not specified in the Indiana statute to guarantee him against loss in the event of a non-beneficial improvement.

Other remedies might be fashioned either as appropriate in every case or as alternatives available to the landowner. Consideration might be given, therefore, to a broad grant of equity power to balance the respective interests of the parties or to list various options available to the landowner, such as a forced sale of the land to the improver, sale of the improvement to the landowner, a lien in favor of the improver or the landowner, etc.

Summary. Specific questions that ought to be decided before further consideration of this subject are as follows:

(1) Should any additional relief be granted in the trespassing improver situation?

(2) If so, to whom should the relief be given and what standards of conduct should be provided to determine the availability of such relief?

(3) What additional forms of relief should be provided?

Respectfully submitted,

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Memo 65-17

EXHIBIT I

The first part of this exhibit presents a brief summary of legal and equitable rights in improvements to realty as viewed from several distinct areas of the law. The second part of this exhibit contains a discussion of the relevancy of these existing rules to the trespassing improver situation.

As a preliminary matter, it may be noted that there appears to be no thread of rationality running through various related areas of the law; problems are resolved on a case by case basis. Hence, this summary presents in general terms what appears to be the basic rule in regard to specific relationships without detailing all of the exceptions that may affect the result in a particular case. Case and statutory citations are purposely omitted where otherwise relevant in the interest of reducing the volume of material to a readable level.

FIXTURES

The principal area of the law most appropriate for comparison with the trespassing improver situation is the law relating to fixtures. It has been stretched beyond traditional scope by a variety of fictions as to "intent" and "consent" in order to fashion solutions to diverse problems not unlike those encountered in the trespassing improver situation.

A fixture is personal property attached to realty in such a manner as to be considered real property. A threefold test has been developed in the cases to settle disputes as to ownership of fixtures: (1) the manner of annexation; (2) adaption to use with real property; and (3) intent to annex the personalty to realty. Of these, intention is the most significant; the manner of annexation and the use to which the property is put are relevant primarily as bearing upon determining such intent.

One difficulty in attempting to draw general conclusions from specific cases in this area may be stated in the form of a caveat: That which is a "fixture" for one purpose as between persons in a particular relationship is not necessarily considered a "fixture" for other purposes related to that relationship, nor is it necessarily considered a "fixture" as between persons similarly situated in another relationship even where there are common parties to both relationships. Thus, for example, the same article that may be a removable trade fixture as between landlord and tenant for the purpose of determining their respective ownership rights may be considered a permanent improvement for the purpose of taxation; and the same article may be considered as a permanent improvement for the purpose of impressing a mechanic's lien on it for work done at the tenant's request. The net result is that, while it is possible to state the generally applicable rules that are repeated in the cases with respect to a particular relationship, there are numerous exceptions within that relationship as well as different rules operative in overlapping relationships. Hence, what follows in regard to fixtures is a digest of the law applicable to particular relationships without attempting to specify all of the exceptions that may curtail the availability of the remedies mentioned. For example, an obvious exception is that the result in a particular case may be changed by the existence of an agreement between the parties reflected in a contract, lease, mortgage, etc.

Landlord and tenant

The law is most clearly developed in the lessor-lessee situation where lenient rules have been fashioned as tempering influences on the harsh result dictated by Civil Code Section 1013.

General rule. A fixture installed by a tenant becomes the property of the landlord upon the termination of the tenancy unless (1) there is an agreement permitting removal or (2) it is installed for the purpose of "trade, manufacture, ornament, or domestic use" and not so affixed as to become "an integral part of the premises." (Caveat: By the terms of Civil Code Section 1013.5, any property affixed by a tenant, whether or not it is a "trade fixture" and regardless of whether it has become "an integral part of the premises," may be removed by him if it was affixed in good faith by mistake and the tenant pays any damages resulting from affixing and removal and obtains necessary consent from lienholders.)

Courts are extremely lenient in the landlord-tenant situation, usually granting relief to the tenant on the basis that (1) property never became "fixture" (but retained character of personalty) because easily removable, (2) though removal difficult, tenant would not make valuable improvement unless he expected to be able to remove it at will (hence, tenant did not "intend" improvement to be a fixture), or (3) implied consent of landlord.

Rationale. Results favorable to the tenant in cases where the court cannot escape the conclusion that the improvement was a "fixture" usually are explained in terms of the tenant's intent, i.e., in the absence of a contrary agreement, a tenant would not intend to make valuable improvements to realty unless he expected to be able to remove them at will.

Remedies. The normal remedies resorted to by the landlord include injunction to prevent threatened removal of fixtures, damages (measured by value of the fixture) for conversion of fixture by the tenant, damages for injury to the premises by reason of removal of fixture. Tenant's remedies include removal (clearly the most valuable right), damages for landlord's conversion of fixture (in wrongful eviction, for example),

setoff (for value of improvement) as defense to landlord's action for rent.

Licensor and licensee

General rule. In the absence of a contrary agreement, a fixture installed by a licensee becomes the property of the licensor upon the termination of the license. However, unless there is an agreement to the contrary, a licensor will be deemed to have consented to removal by the licensee. As a practical matter, therefore, a licensee retains ownership of fixtures installed by him and is entitled to remove them at will. (Note that a licensee may now have a right of removal if he meets the conditions of Civil Code Section 1013.5.)

As in the landlord-tenant situation, the courts frequently find improvements not to be fixtures (and, hence, to retain their character of personalty belonging to the licensee) or, if a fixture classification is inescapable, find implied consent on the part of the licensor to permit removal by the licensee.

Rationale. Courts normally rationalize the liberal results in the licensor-licensee situation by finding consent to licensee's removal of fixtures installed by him on the basis that it is unreasonable to suppose that a licensee intends his improvement to become a permanent accession to the licensor's property.

Remedies. Licensor's remedies probably include (no case found where relief was granted to licensor) injunction to prevent threatened removal by licensee, damages for conversion, damages for injury to remaining property. Licensee's remedies include removal (clearly the most valuable remedy) and damages for conversion by licensor (or for destruction by licensor).

Vendor and vendee (conditional sales)

"Intent" of the improver is applied with force in this relationship as in similar relationships where the improver expects to perfect title to the improved property.

General rule. Improvements made by a conditional vendee normally are considered permanent improvements to the land and, hence, pass with the land upon default--conditional vendor becomes the owner of improvements. (Caveat: In spite of vendee's default, relief to the vendor may be denied entirely where the vendee has substantially performed the contract and made valuable improvements to the property; hence, vendee may retain ownership. Similarly, even if relief is granted the vendor (so that he becomes owner of the property in its improved state), the vendee may be entitled to relief from forfeiture to the extent that the value of the improved property exceeds the vendor's damages (and, to that extent, would constitute a windfall). However, value of improvements per se are not recoverable.)

Rationale. A conditional vendee expects to become absolute owner of the property being improved and, therefore, "intends" his improvement to be affixed to the property. Even though legal title is technically vested in the conditional vendor, the vendee treats the property as his own; hence, he does not intend to maintain any distinction between the principal property and the improvement.

Remedies. Conditional vendor's usual remedy is repossession through declaration of forfeiture for breach of contract; presumably, vendor is entitled to injunction to prevent removal and damage for conversion in the event of wrongful removal. Vendee's principal remedy is equitable relief from forfeiture; vendee has no right of removal because he is treated as the owner of the property and, therefore, has not improved property belonging to another.

Mortgagor and mortgagee

A mortgage of realty includes all fixtures attached to the land at the time of the mortgage together with subsequent improvements attached by the mortgagor.

General rule. Mortgagor's improvements pass with the land.

Rationale. A mortgagor is the legal owner of the property; hence, he "intends" improvements affixed by him to become merged with his interest in the property.

Remedies. Mortgagee's usual remedy is foreclosure, forced sale, and distribution to mortgagor of amount in excess of that needed to satisfy the encumbrance. Mortgagee also has action for waste if, for example, removal of improvements would diminish security interest. Mortgagor has no severable interest in improvements as such; removal is not an available remedy because improvement was "intended" to be affixed to the property.

Trustor and trustee

Generally the same as mortgagor-mortgagee situation.

ENCROACHMENTS

An encroachment is a projection of property from one tract of land onto an adjoining tract (or, technically, under an adjoining tract or into the airspace above an adjoining tract). It appears to be distinguishable from an improvement as such because of the continuous nature of the encroaching property.

General rule

An encroachment remains the property of the encroacher as a general rule, but there are specific examples of cases in which the encroaching property either belongs to the adjoining landowner or is treated as being owned in common by the encroacher and the adjoining landowner. Thus, overhanging branches constitute an encroachment entitling the adjoining landowner to resort to self-help by removal (and the severed property belongs to him). Similarly, an encroaching fence or wall may be used as a boundary fence or party wall by the adjoining landowner, in which case mutual rights and responsibilities attach.

Remedies

Aside from self-help to abate a private nuisance (as in the case of overhanging branches), relief against an encroachment may be obtained in a variey of legal actions (quiet title, ejectment, damages, etc.) or equitable suits (principally for injunction). Availability of relief depends upon the encroacher's conduct. If an encroachment is intentional and not the result of accident or innocent mistake, a mandatory injunction for removal will lie notwithstanding inconvenience, hardship, cost, etc. if removal is required. An encroachment has been held not to be the result of accident or innocent mistake if the encroacher, by the exercise of ordinary diligence, could have acquired knowledge that he was erecting a

structure in part upon adjoining land. Where, however, the encroachment is the result of innocent mistake, courts apply a "balancing of the equities" test to determine the availability of injunctive relief requiring removal. Thus, if the encroachment is small and unintentional and the harm to be suffered by the encroacher by compulsory removal is greatly disproportionate to the injury sustained by the adjoining owner, injunction will be denied and damages awarded instead. As an incident to damages, the court may grant an easement in the encroacher to ensure continued enjoyment in the interest of avoiding future litigation. An easement in the encroacher is the preferred remedy over forced sale by the adjoining owner to the encroacher.

Summary of remedies

There has been considerable litigation in the encroachment area, and there are numerous examples of varied forms of relief. The principal forms of relief available to the adjoining landowner include mandatory injunction compelling removal, damages as an incident to removal, damages in lieu of injunction where encroacher presents successful equitable relief. The encroacher has an affirmative right of removal (probably exercised in nonlitigated cases, but seldom of dispute in litigated cases since litigation usually arises because of hardship in event removal required) and equitable defenses to action compelling removal; encroacher also has a right to damages where adjoining landowner resorts to self-help and injures or destroys remaining portion of encroachment (e.g., destruction of tree roots causing tree to die). In addition, encroacher may be entitled to easement where damages awarded to adjoining landowner in lieu of injunctive relief.

LIENS

The existing lien law is extremely complex, confusing, and dependent upon a variety of factors relating to notice, priority, declarations of nonresponsibility, etc. So far as it is relevant to the trespassing improver situation, it is sufficient to note that craftsmen (through mechanic's liens) and materialmen (through materialmen's liens) often have rights against the true owner of property that are superior to the rights of the persons with whom they deal. In other words, the lien law often cuts across other relationships to establish substantial rights in the lienholder nothwithstanding the absence of rights in the person with whom he contracted. Thus, for example, in Linck v. Meikeljohn, 2 Cal. App. 506 (1905), the forced sale of an improvement was directed to satisy materialmen's lien in favor of one "who furnished the materials used in the construction of a house erected by a contractor, who constructed the same under a contract with one, not the owner, but who falsely represented himself as such" in face of an appeal by the true owners of the realty. The court noted that:

> It is true that where a building is constructed in a permanent manner upon land it becomes a part thereof, but if it is constructed with a lien thereon it becomes a part of such land subject to such lien. It would be grossly inequitable to say that one who may elect to retain it, with knowledge that it is burdened with a lien, and yet hold it free from such burden. If the land owner desires to avail himself of the incidental benefit of the construction made without his authority, he should be required in common honesty to pay liens thereon occasioned by its construction, created in good faith, without knowledge that the erection of the building was unauthorized. [2 Cal. App. at 508.]

The court also noted that no apparent damage would be suffered by the landowner by the sale and removal of the building. See also Barr Lumber Co. v. Shaffer, 108 Cal. App.2d 14 (1951).

In R. Barcroft & Sons Co. v. Cullen, 217 Cal. 708 (1933), lessor and

lessee agreed that building constructed by lessee would belong to lessor; lessee contracted with Steel Company to erect building under conditional sales contract; lessee contracted with craftsman to install fixtures upon completion of building. Plaintiff craftsman perfected and brought action to foreclose on mechanic's lien; defendant Steel Company (conditional vendor) defended on basis that building was its personal property under sales contract; lessor apparently was unaware of the total transaction. Held, as to plaintiff, building was fixture; hence, mechanic's lien attached to building and, if necessary, to realty. "[O]ne claiming a mechanic's lien on an article annexed to the realty is not affected by a chattel mortgage or conditional sales contract of which he has no notice." As between craftsman and owner, building was fixture to which lien attached because of lease agreement.

From the foregoing, it is apparent that a lien may be impressed in situations where, if the lienholder were to stand in his contractee's shoes, no relief would be available; it is equally apparent that substantial protection is presently accorded to persons entitled to a lien.

OWNER-TRESPASSER

Before discussing the relevance of the rules applicable in related areas of the law to the trespassing improver situation, it is appropriate to review the existing law in regard to improvements made by a trespasser.

General rule. Improvements made by a trespasser belong to the owner of the land.

Remedies. A good faith trespasser is entitled to remove improvements upon payment to the owner of damages occasioned thereby and upon obtaining necessary lienholder's consent. If improvements are not removed, a good faith trespasser may be entitled to setoff for value of improvements against the owner's claim for damages based on use; he is entitled to no affirmative recovery of money damages. (It is conceivable that owner's destruction of removable improvement would subject owner to claim for damages, but no case involving this situation as between owner and trespasser has been found. Cf. Gosliner v. Briones, 187 Cal. 557 (1921)(licensee entitled to recover damages for licensor's destruction of improvements made by licensee). There is a possible conflict between the provision in Civil Code Section 1013 giving the owner the right to require removal and the conditions expressed in Section 1013.5 under which removal may be effected (lienholder's consent, etc.). Query: What if owner's insistence on removal of immovable improvement would result in destruction of the improvement?

A culpable trespasser is entitled to no relief under existing law.

Discussion. The preceding summary of the law relating to improvements in a variety of circumstances reveals a substantial arsenal of rights granted to improvers of property who have some interest therein at the time of the improvement. Whether the existing law in these related areas be regarded as a

hodge-podge of confused reasoning or an attempt to reach equitable results in a variety of complex situations involving diverse relationships, there is at least a measure of certainty that defines existing rights in a variety of situations. It is apparent, for example, that the existing removal statute constitutes statutory recognition of a valuable right previously recognized in the cases, and, in addition, grants a substantial right to some persons falling within its terms not theretofore enjoyed (e.g., good faith trespassers). Prior to the enactment of Section 1013.5, recognition of removal rights often depended upon a consideration of the probable damage that would be caused to the remaining premises. If removal could not be effected without substantial damage, the courts fashion a rule settling ownership in the landowner; if removal is easy, a contrary result obtains. The effect of Section 1013.5 on the development of cases in the fixtures area, therefore, may be substantial; if followed literally, the section would permit removal without regard to damages so long as compensation is made. If the existing emphasis on "intent" is retained, therefore, one might expect a greater incidence of reliance on Section 1013.5 in lessor-lessee cases to reform traditional classifications regarding fixtures.

The right of removal granted a good faith improver under Section 1013.5 is a substantial step forward in eliminating pre-existing inequities in the law. The principal difficulty in the existing law, therefore, would appear to be the adequacy of setoff as an alternative remedy where removal rights are not exercised. If the law of fixtures be relied upon as an appropriate comparison, it might be noted that setoff is not an available remedy in the various relationships reviewed because the improver's holding is not adverse to the property owner. Similarly, removal is not available in a number of relationships

under the law of fixtures. The net result is that, at least with respect to the law of fixtures, persons making improvements who have a perfect right to do so may be in a less advantageous position under existing law than the good faith trespasser. For example, a tenant who cemented asphalt tile to a wooden floor was held to have lost his interest therein because the tile became an integral part of the realty. (Removal might be possible today under the literal terms of Section 1013.5.) Even if a good faith improver were held not entitled to remove similarly installed tile today, he would be entitled to setoff for value of the improvement against an owner's claim for damages based on use.

It would appear that the principal deficiency in the existing law relating to improvements generally is (1) the adequacy of relief where removal is not possible (or, perhaps, where removal would so substantially destroy either the improvement or the remaining property as to be unfeasible) and (2) the availability of removal as an appropriate remedy in cases where removal is not presently recognized (vendor-vendee, mortgagor-mortgagee, etc.). As to the latter category, it probably happens as a practical matter that removal is resorted to in fact to the extent that the security interest is not impaired. For example, as owner of a fee subject to a mortgage, it is perfectly reasonable to expect an improvement to be erected and later removed without interference from the mortgagee so long as the security interest is not impaired. At the point of possible impairment, or even earlier if technical niceties be resorted to, a foreclosing mortgagor might prevent removal. In any event, the principal problem regarding the trespassing improver situation would appear to arise when removal is not a practical possibility.

EXHIBIT II

There follows the text of betterment statutes in four states (Connecticut, Georgia, Indiana, and Minnesota) that are representative of the general trend of statutes in those states having betterment legislation.

CONNECTICUT

§ 47-30. Final judgment shall not be rendered, in any action to recover the possession of land, against any defendant who has, in good faith, believing his title to the land in question absolute, made improvements thereon before the commencement of the action, or whose grantors or ancestors have so made such improvements, until the court has ascertained the present value of such improvements and the amount reasonably due the plaintiff from the defendant for the use and occupation of such land. If such value of such improvements exceeds such amount due for use and occupation, execution shall not be issued until the plaintiff has paid such balance to the defendant or into court for his benefit; but, if the plaintiff elects to have the title confirmed in the defendant and, upon the rendition of the verdict, files notice of such election with the clerk of the court, the court shall ascertain what sum ought in equity to be paid to the plaintiff by the defendant or other parties in interest and, on payment thereof, may confirm the title to such land in the parties paying it.

GEORGIA

§ 33-106. A trespasser may not set off improvements in an action brought for mesne profits, except when the value of the premises has been increased by the repairs or improvements which have been made. In that case the jury may take into consideration the improvements or repairs, and diminish the profits by that amount, but not below the sum which the premises would have been worth without such improvements or repairs.

§ 33-107. In all actions for the recovery of land, the defendant who has bona fide possession of such land under adverse claim of title may set off the value of all permanent improvements bona fide placed thereon by himself or other bona fide claimants under whom he claims; and in case the legal title to the land is found to be in the plaintiff, if the value of such improvements at the time of the trial exceeds the mesne profits, the jury may render a verdict in favor of the plaintiff for the land and in favor of the defendant for the amount of the excess of the value of the improvements over the mesne profits.

§ 33-108. The verdict mentioned in the preceding section shall also find the value of the land itself at the time of the trial, and shall give the plaintiff the alternative right to have and recover the premises, subject to the payment to the defendant of such excess of value of improvements over mesne profits, the payment to be made by the plaintiff to the defendant within such time as may be fixed by the court in the decree; and in the event the plaintiff fails to make the payment within the time allowed in the decree, then the defendant shall have the right to pay to the plaintiff the value of the land and the mesne profits that shall be

found due plaintiff by the jury on the trial of the case; the payment by the defendant shall be made within such time as the court may direct by its decree. In all cases in which such set-off of improvements are sought in excess of mesne profits, the jury shall have the right to fix the time from which mesne profits shall be allowed; and upon the defendant making such payment to the plaintiff, with all court costs of the proceedings, the defendant shall then acquire and have all the right and title the plaintiff had and held in and to the property in dispute; and the court may by its decree require the plaintiff to make such titles to the lands in dispute as may be necessary in the premises, or else to have the premises sold by a commissioner appointed by the court, and the proceeds of such sale divided between the plaintiff and defendant in the ratio or proportion that the said value of the land itself bears to the amount of said excess of value of improvements over the mesne profits, or else to recover the value of the land itself, together with the amount of any excess of the value of the mesne profits over and above the value of the improvements; and in case the plaintiff elects to recover the value of the land itself, together with the amount of the excess of value of mesne profits over the value of the improvements, the fi. fa. issued upon the verdict and judgment therein entered shall be levied upon the lands and improvements, and the same shall be sold by the sheriff after due advertisement under the law governing sheriffs' sales.

§ 3-1501. When an occupant of land has color of title thereto, and in good faith has made valuable improvements thereon, and is afterward, in the proper action, found not to be the rightful owner thereof, no execution shall issue to put the plaintiff in possession of the property after filing the compaint hereinafter mentioned, until the provisions of this act are complied with.

§ 3-1502. The occupying claimant may recover the value of lasting improvements made by the party under whom he claims, as well as those made by himself; and any person holding the premises as a purchaser, by an agreement in writing from the party having color of title, shall be entitled to this remedy.

§ 3-1503. The purchaser in good faith at any judicial or tax sale, made by the proper person or officer, has color of title within the meaning of this act, whether such person or officer had sufficient authority to sell or not, unless the want of authority was known to the purchaser at the time of the sale; and the rights of the purchaser shall pass to his assignees or representatives.

§ 3-1504. Any occupant of land who can show a connected title in law or equity, derived from the records of any public office, or who holds the same by purchase or descent from any person claiming title derived as aforesaid or by deed duly recorded, has color of title, within the meaning of this act.

§ 3-1505. The complaint must set forth the grounds on which the defendant seeks relief, stating, among other things, as accurately as practicable, the value of the improvements on the lands as well as the value of the lands aside from the improvements.

§ 3-1506. All issues joined thereon shall be tried as in other cases, and the court or jury trying the cause shall assess:

First. The value of all lasting improvements made as aforesaid on the lands in question previous to the commencement of the action for the recovery of the lands.

Second. The damages, if any, which the premises may have sustained by waste or cultivation to the time of rendering judgment.

Third. The fair value of the rents and profits which may have accrued, without the improvements, to the time of rendering judgment.

Fourth. The value of the estate which the successful claimant has in the premises, without the improvements.

Fifth. The taxes, with interest, paid by the defendant and by those under whose title he claims.

§ 3-1507. The plaintiff in the main action may thereupon pay the appraised value of the improvements, and the taxes paid, with interest, deducting the value of the rents and profits, and the damages sustained as assessed on the trial, and take the property.

§ 3-1508. Should he fail to do this, after a reasonable time, to be fixed by the court, the defendant may take the property, upon paying the appraised value of the land aside from the improvements.

§ 3-1509. If this be not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants-in-common of all the lands, including the improvements, each holding an interest proportionate to the value of his property, as ascertained by the appraisement above contemplated.

§ 3-1510. The plaintiff shall be entitled to an execution for the possession of his property, in accordance with the provisions of this article, but not otherwise.

§ 3-1511. Whenever any land sold by an executor, administrator, guardian, sheriff or commissioner of court is afterwards recovered, in the proper action, by any person originally liable, or, in whose hands, the land would be liable, to pay the demand or judgment for which, or for whose benefit, the land was sold, or any one claiming under such person, the plaintiff shall not be entitled, after the filing of the complaint, to a writ for the possession, without having paid the amount justly due, as determined under the provisions of the following section, within the time therein stated.

§ 3-1512. The defendants in the main action, or any of them, may file their complaint, setting forth the sale and title under it, and any other matter contemplated in this act. Proceedings shall then be had, as aforesaid, to determine the amount of purchase-money paid, with interest, the value of the lasting improvements, the damages, if any, which the premises have sustained by waste or cultivation, the value of the rents and profits, and the taxes paid. If any balance remains due from the plaintiff in the main action, the court shall fix a reasonable time within which he shall pay the same, and if it be not paid within that time, the court shall order the lands to be sold without relief from valuation or appraisement laws. In case of sale, there shall be paid the costs of the proceedings and the amount due the defendant, with interest, and the surplus, if any, shall be paid to the plaintiff.

MINNESOTA

NOTE: Generally similar to Indiana, but note the following section.

§ 559.09. When any person, in good faith and under color of title, and with good reason to believe that the legal title to land is vested in him, has erected any building or other structure thereon, when the legal and equitable title thereto was vested in another, such person may remove the same, doing no unnecessary damage, and in so doing shall be liable only for the actual damage to the land. Such removal shall be made within 60 days after the determination adversely to him of any action or proceeding respecting the title, or within 60 days after notice from the holder of the legal title to remove the same; provided, if, within 60 days after receiving such notice, such person brings action to try such title, he may make such removal within 60 days after the determination thereof.