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## RESTITUTION-IMPROVEMENTS-RECOVERY UNDER OCCUPYING CLAIMANTS ACT

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RESTITUTION—IMPROVEMENTS—RECOVERY UNDER OCCUPYING CLAIMANTS ACT—Plaintiff sought recovery for value of improvements claimed to have been made as an "occupying claimant" as defined by statute.<sup>1</sup> He had dumped dirt and debris into the Missouri River for many years. This dirt and debris came both from his own excavations in the city and from excavations of other contractors who hired him to haul it away. The result was "made land" which plaintiff occupied for several years prior to ejection by the defendant city.<sup>2</sup> Verdict was directed for defendant, plaintiff appealing. *Held*, affirmed. "Made land" did not constitute valuable improvements within the meaning of the statute. *Betz v. City of Sioux City*, (Iowa, 1949) 38 N.W. (2d) 628.

The occupying claimant or betterment acts were passed in order to alleviate the harshness of a broad common-law rule which denied recovery to one who improved the soil of another in good faith, thinking that it was his own.<sup>3</sup> The specific rule applied to the instant case and those like it is that one who, in promoting his own interests, does something which is of incidental advantage to another will not be able to recover the value of that advantage.<sup>4</sup> Here the court recognized plaintiff as a claimant with color of title as required by the statute,<sup>5</sup> but denied his status as an occupying claimant on the theory that no valuable improvements were made. The reasonable interpretation of the decision is that the improvements were incidental and unintentional, benefiting plaintiff, in all probability, more than defendant.<sup>6</sup> Such improvements are not valuable within the contemplation of the statute.<sup>7</sup> The court is on solid ground with this analysis. Courts in the nineteenth century clearly denied recovery on these facts.<sup>8</sup> Recent cases under the occupying claimant statutes on the question of recovery for incidental benefit are non-existent. Hints as to the probable result in some jurisdictions may be found in dicta. Where the courts have had occasion to allude to this situation they have expressly held that expenditures of money and/or labor must be made with improvement of the land in mind.<sup>9</sup> This would seem to be a logical

<sup>1</sup> Iowa Code Ann. (1946) §560.1 et seq.

<sup>2</sup> *City of Sioux City v. Betz*, 232 Iowa 84, 4 N.W. (2d) 872 (1942).

<sup>3</sup> 137 A.L.R. 1078 (1942).

<sup>4</sup> WOODWARD, QUASI CONTRACTS §49 (1913) and cases cited therein; RESTITUTION RESTATEMENT §42 (1937); 137 A.L.R. 1078 (1942).

<sup>5</sup> Iowa Code Ann. (1946) §§560.1, 560.2.

<sup>6</sup> It should be remembered that plaintiff was paid to dump part of the debris and necessarily had to get rid of that part coming from his own excavations. The river was a convenient dumping area for him.

<sup>7</sup> ". . . 'Improvement' . . . includes in its meaning any development whereunder work is done and money expended with reference to the future benefit or enrichment of the premises." *Eppes v. Eppes*, 181 Va. 970 at 988, 27 S.E. (2d) 164 (1943); 44 WORDS AND PHRASES, perm. ed., Valuable Improvements 31 (1940).

<sup>8</sup> *Loring v. Bacon*, 4 Mass. 575 (1808); *Calvert v. Aldrich*, 99 Mass. 74 (1868); *Peters v. Gallagher*, 37 Mich. 407 (1877); *United States v. Pacific R. Co.*, 120 U.S. 227, 7 S.Ct. 490 (1887); *Ulmer v. Farnsworth*, 80 Me. 500, 15 A. 65 (1888).

<sup>9</sup> *Cullop v. Leonard*, 97 Va. 256, 33 S.E. 611 (1899); *Coombs v. Deaton*, 199 Ky. 477, 251 S.W. 638 (1923); *Rzeppa v. Seymour*, 230 Mich. 439, 203 N.W. 62 (1925); *Leonard v. Williams*, 220 Ky. 413, 295 S.W. 408 (1927); *Pakulski v. Ludwiczewski*, 291 Mich. 502, 289 N.W. 231 (1939); *Eppes v. Eppes*, supra, note 7.

result when it is considered that the purpose of the statutes is to prevent hardship, not to drop a plum into the hands of one who has made an incidental improvement. Under the peculiar facts of this case, the court can hardly be criticized for denying plaintiff recovery of "something for nothing." It would be ironic to allow plaintiff recovery under a statute which was designed to prevent undue loss to an occupying claimant for improvements made on land, when that claimant has suffered no such loss. The court wisely avoided such a misconstruction of the statute.

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