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REAL PROPERTY--ADVERSE POSSESSION--WHAT CONSTITUTES ADVERSE POSSESSION OF LAND USED PERIODICALLY

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REAL PROPERTY—ADVERSE POSSESSION—WHAT CONSTITUTES ADVERSE POSSESSION OF LAND USED PERIODICALLY—Plaintiff in an ejectment action claimed under a chain of title tracing back to a government patent. Defendants asserted title in themselves by adverse possession. The land in question was wild, undeveloped, and not suitable for farming, but was desirable for hunting and fishing, for which purpose the defendants had used the premises every year since their entry. In 1926 some of the defendants built a cabin on the land, and replaced it in 1932 by the present one, which they built on a cement foundation, painted, and planted grass around. They also erected a sign at the crossroads bearing the name of the camp. In 1928 they bought the tax title for the 1924 taxes, and in 1929 followed the statutory procedure for service of notice to redeem. Defendants paid the taxes on the land for every year from 1924 to 1949, except for 1945. In 1939, defendants sold the pulpwood on the land, and the loggers occupied cabins visible from the road during its removal. They also sold a portion of the land to the county road commission, and executed and recorded other conveyances covering the land in question. During the time of defendants' possession, plaintiff and her predecessors did nothing to indicate anything other than an abandonment of their rights in the land. On appeal from

[7] Ferris v. Montgomery Land & Improvement Co., 94 Ala. 557, 10 S. 607 (1891); Cooper v. Brown, 143 Iowa 482, 122 N.W. 144 (1909); Hogan v. McMahon, 115 Md. 195, 80 A. 695 (1911); Miller v. Prater, 267 Ky. 11, 100 S.W. (2d) 842 (1937). See 14 AM. JUR. 116 (1938).

[8] Where feasible the court will give the benefit to the erecting tenant by allotting him that portion of the land on which the improvements are situated. Where this is impracticable, the other cotenants may be required to pay him their proportionate share of the enhancement of value resulting from such improvement. Bowers v. Rightsell, 173 Ark. 788, 294 S.W. 21 (1927); Indra v. Wiggins, 238 Iowa 728, 28 N.W. (2d) 485 (1947); 68 C.J.S. 220 (1950). The reason for allowing compensation is that the value of the land is enhanced, cotenants are not injured in any way, and they should not be permitted to take advantage of improvements of the common property to which they have contributed nothing. See 1 A.L.R. 1189 (1919). Query, whether the lienor, after foreclosing and succeeding to the cotenant's interest, can secure the value of the improvement in an equity proceeding for partition or accounting.

a judgment for defendants, *held,* affirmed. Defendants had acquired title by adverse possession. *Monroe v. Rawlings,* (Mich. 1951) 49 N.W. (2d) 55.

For a possessor to acquire title to land by reason of his possession, such possession must be actual, visible, exclusive, hostile, and continuous.[1] Cases relied upon by plaintiff in the principal case indicate a contention that defendants' possession was not actual or continuous.[2] The requirements of visibility and hostility were not questioned. The building and sign satisfy the former, and filing the tax deed the latter.[3] The court apparently did not consider the question of exclusiveness. Plaintiff's contention that defendants' possession was not continuous raises a question on which the authority, though not unanimous, is overwhelmingly in favor of defendant. In the absence of statute, occupancy or residence is not necessarily a requisite of adverse possession.[4] Therefore, it is not necessary in all cases that the adverse claimant remain continuously upon the land. However, there must be some continuity in his acts of dominion. This continuity will be found in cases where the intervals between acts are reasonable, and are consistent with a continued claim of ownership of that particular piece of land.[5] The requirement of actuality is perhaps the most elusive of definition. It is safe to say, however, that there must almost always be some acts on, or in connection with, the land, as opposed to a mere claim of ownership or possession. Several states have statutes specifying, at least in part, what acts will be considered as amounting to adverse possession.[6] In the absence of statutory provisions, the courts generally hold that the acts of the adverse claimant must be the acts ordinarily performed by the owner of similar land, taking into consideration the situation and location of the land, as well as the uses for which it is adapted.[7] The diffi-

[1] 4 TIFFANY, REAL PROPERTY, 3d ed., §1133 (1939).

[2] "Plaintiff stresses that defendants have never improved the land, fenced it, posted it, attempted to keep off others, or lived on it. She relies on cases holding that mere payment of taxes for years, removal of timber and gravel, cutting of hay, and occasional squatting on the premises, do not suffice to establish title by adverse possession." Principal case at 56.

[3] Recording a tax deed is held sufficient disseisin to support ejectment in Michigan. Whitaker v. Erie Shooting Club, 102 Mich. 454, 60 N.W. 983, 984 (1908). Payment of taxes is generally held evidence of adverseness or hostility. See 4 TIFFANY, REAL PROPERTY, 3d ed., §1138 (1939).

[4] Merritt v. Westerman, 165 Mich. 535, 131 N.W. 66 (1911); Enos v. Murtaugh, 47 Cal. App. (2d) 269, 117 P. (2d) 905 (1941); Fractional School District No. 4 v. Hedlund, 330 Mich. 17, 47 N.W. (2d) 19 (1951); Farris v. Smallwood, (Okla. 1951) 227 P. (2d) 644. See also, 4 TIFFANY, REAL PROPERTY, 3d ed., §1138 (1939); and 1 AM. JUR. §870 (1936).

[5] Hardy v. Bumpstead, (Tex. Comm. App. 1931) 41 S.W. (2d) 226; Crispin v. Hannavan, 50 Mo. 536 (1872). See also, 5 PROPERTY RESTATEMENT §459 (1944); and 1 R.C.L. 694, 695 (1914).

[6] A good discussion of the statutory aspects of adverse possession will be found at 20 IOWA L. REV. 551, 738 (1935); and 25 IOWA L. REV. 78 (1939).

[7] Murray v. Hudson, 65 Mich. 670, 32 N.W. 889 (1887); Clear Lake Amusement Co. v. Lewis, 236 Iowa 132, 18 N.W. (2d) 192 (1945); Preston v. Preston, 201 Okla. 555, 207 P. (2d) 313 (1950); Kenney v. Bridges, (Mont. 1949) 208 P. (2d) 475; Allen v. Wiseman, 359 Mo. 1026, 224 S.W. (2d) 1010 (1949); Farris v. Smallwood, supra note 4; Thomas v. Rogers, (Ala. 1951) 53 S. (2d) 736; Walker v. Bell, 154 Neb. 221, 47 N.W. (2d) 504 (1951). See also, 4 TIFFANY, REAL PROPERTY §1138 (1939); and 1 AM. JUR. §§130, 131 (1936).

culty of defining the abstract requirements of adverse possession, in a manner applicable to the wide variety of fact situations arising, and resulting differences in definition and emphasis by the courts, leads to the conclusion that a more rewarding analysis will be conducted along other lines. The same can be said of any attempt to list acts, out of the context of actual cases, which will amount to adverse possession.[8] It is submitted that an attempt to define adverse possession by reference to necessary abstract qualities is too general, and does not go far enough in bridging the distance between the rule of law and the situation to which it is applied. The converse can be said of an attempt to list acts which constitute adverse possession; this approach seems too specific, and goes beyond the point of satisfactory application to various sets of circumstances. However, both approaches appear to have a double implication in that they make certain demands as to the character of the possession and, directly or indirectly, concern themselves with the question of possible notice to the owner. It is submitted that a workable definition of adverse possession, one which balances the two extremes of generality and specificity, and gives consideration to the question of notice, appears in the approach taken by a large number of the courts to the effect that: a person gains title to land by adverse possession when he has continued to act toward that land as an owner would act toward that particular piece of land for the statutory period,[9] provided that these acts are such as would give notice of the adverse claim to the owner if he were in the neighborhood.[10] The decision of the Michigan court in the principal case is in harmony with the approach suggested here.

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[8] This can be illustrated by the fact that the states with statutory lists of acts considered as adverse possession generally do not treat these lists as exclusive. See 25 IOWA L. REV. 78 (1939).

[9] See cases cited, note 7 supra.

[10] Merritt v. Westerman, supra note 4; Fractional School District No. 4 v. Hedlund, supra note 4; Farris v. Smallwood, supra note 4. See also, 4 TIFFANY, REAL PROPERTY, 3d ed., §§1138, 1140 (1939); 1 AM. JUR. §130 (1936); 5 PROPERTY RESTATEMENT §458 at p. 2931 (1944).