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REAL PROPERTY-TORRENS SYSTEM-PRESERVATION OF EQUITABLE EASEMENTS

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REAL PROPERTY—TORRENS SYSTEM—PRESERVATION OF EQUITABLE EASEMENTS—Plaintiff sued to have certain lots declared free and clear of a restrictive covenant. The land was registered under a Torrens statute, but the restrictive covenant was not noted on the certificate of title. However, it was noted on a plat of the land which was referred to in the certificate of title for the purpose of identifying the location of the land. The lower court denied relief and enjoined violation of the restrictions. *Held*, reversed, plaintiff as a good faith purchaser for value of registered land, obtains the land free and clear of a restrictive covenant not noted on the certificate of title of the previous owner. *Kane v. State*, (Minn. 1952) 55 N.W. (2d) 333.

The purpose of land title registration is to set up in a single certificate a complete display of the status of the ownership of the land. This certificate is then to be conclusive that there are no outstanding interests which are not noted thereon.¹ To accomplish this purpose effectively it is necessary that the title as shown by the certificate be complete and indefeasible.² That the result in this case is supported by the purpose of the Torrens system is undoubtedly true. However, many jurisdictions have engrafted an exception to the operation of the system in the case of actual notice of an outstanding interest by stating that such notice is cause for the interest to be upheld even if it is not shown on the title registration.³ Under a statute providing that only the bona fide purchaser can conclusively rely on his vendor's certificate of title, this exception is clearly called for.⁴ With this requirement, a purchaser with actual notice of an outstanding interest is not a bona fide purchaser⁵ and thus receives no greater protection than he would have obtained under the conventional recording statute.⁶ The statutes of several states, including Minnesota, are of this type. But there is nothing in such statutes to indicate that a contrary result should be reached when notice of the outstanding interest is only constructive rather than actual.⁷ Thus the courts are frequently presented with the problem of interpreting Torrens statutes to decide whether constructive notice negates good faith and therefore prevents a buyer from overcoming an unregistered claim. By analogy

¹ Annotation, *The Torrens Law*, L.R.A. 1916D, 14; TIFFANY, *THE MODERN LAW OF REAL PROPERTY* §807 (1940); *In re Juran*, 178 Minn. 55, 226 N.W. 201 (1929).

² *Carl v. DeToffol*, 223 Minn. 24, 25 N.W. (2d) 479 (1947); 45 AM. JUR., *Registration of Land Titles* §16 (1943); 3 DEVLIN, *THE LAW OF REAL PROPERTY AND DEEDS*, 3d ed., §1439 (1911); Staples, "The Conclusiveness of a Torrens Certificate of Title," 8 MINN. L. REV. 200 (1924).

³ *In re Juran*, note 1 supra; *Cook v. Luettich*, 191 Minn. 6, 252 N.W. 649 (1934); *Warden v. Wyandotte Sav. Bank*, 47 Cal. App. (2d) 352, 117 P. (2d) 910 (1941). ". . . Statutes, attempting to say that taking a title with notice of an outstanding interest is not a fraud, break down utterly when they come for construction before the courts. . . ." L.R.A. 1916D, 15.

⁴ 2 Minn. Stat., c. 508, §25 (1949); 3 Cal. Gen. Laws (Deering, 1944) act 8589, §39; *Carl v. DeToffol*, note 2 supra.

⁵ *Minor v. Willoughby and Powers*, 3 Minn. 154 (1859); *Marsh v. Armstrong*, 20 Minn. 81 (1873).

⁶ Staples, "The Conclusiveness of a Torrens Certificate of Title," 8 MINN. L. REV. 200 at 208 (1924); *Killam v. March*, 316 Mass. 646, 55 N.E. (2d) 945 (1944).

⁷ 2 Minn. Stat., c. 508 (1949); 3 Cal. Gen. Laws (Deering, 1944) act 8589.

to court decisions under the recording acts, it would be reasonable to expect that constructive notice of an adverse interest would be sufficient to sustain the interest.⁸ Although this result would be logical, it is not unobjectionable. This analysis results in giving no greater certainty to a title registered under a land registration scheme than to one under a conventional recording act, directly violating the basic policy and objective of the Torrens system.⁹ For this reason many courts have ruled that constructive notice is not sufficient to preserve an outstanding land interest against an otherwise bona fide purchaser.¹⁰ Thus the courts have reached a compromise between complete indefeasibility of the title as shown by the certificate and the uncertainty of title under the recording acts. This compromise consists of recognizing actual notice as a bar to a good faith claim but denying such recognition to constructive notice. Considered from the viewpoint of a reasonable purchaser of registered land there is even further support for favoring the title certificate as it appears over constructive notice of other rights. Relying on the frequent statements of the courts as to the conclusiveness of the registration instrument,¹¹ a purchaser would logically discontinue his search without looking further for more distant defects in title. To encourage him to follow this course of action and then to turn on him and hold him accountable for things which could have been learned through a more diligent search would be highly inequitable. The adverse party is also in a difficult position. His damage remedy as provided by land registration funds¹² often will be quite inadequate, particularly in equitable easement cases because of the difficulty of measuring the damages resulting from breach of an equitable easement. For this argument no satisfactory answer appears. But the injustice in equitable easement cases is no greater than it is in any case where a person is deprived of an interest through operation of the Torrens system and forced to settle for a damage remedy in satisfaction of his claim. This injustice is evidently a necessary evil inherent in the functioning of land registration.¹³ Thus it would appear that the decision in this case, although not following logically from the purpose of the statute or from an extension of the reasoning of recording act cases, brings about a wise though compromising result.

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⁸ TIFFANY, *THE MODERN LAW OF REAL PROPERTY* §793, §350 (1940); *United States v. Sandlass*, (D.C. N.J. 1940) 34 F. Supp. 81; *Bryant v. Gustafson*, 230 Minn. 1, 40 N.W. (2d) 427 (1950).

⁹ Staples, "The Conclusiveness of a Torrens Certificate of Title," 8 *MINN. L. REV.* 200 at 208 (1924).

¹⁰ *In re Juran*, note 1 *supra*.

¹¹ The Torrens Act is "designed to encourage reliance on state of registered title," *Naiburg v. Hendriksen*, 370 Ill. 502, 19 N.E. (2d) 348 (1939); *In re Allan's Estate*, 28 Cal. App. (2d) 181, 82 P. (2d) 190 (1938).

¹² 2 Minn. Stat., c. 508, §76 (1949).

¹³ *Rowan v. Harburney Oil Co.*, (10th Cir. 1937) 91 F. (2d) 122. It was a recognition of the inadequacy of the remedy at law which originally gave rise to the equity remedy of specific performance in cases relating to an interest in land.