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CLEARANCE OF LAND TITLES-A STATUTORY STEP

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PUBLIC Act of Michigan, No. 200, was approved by the governor on May 17, 1945. Its preparation and enactment are the result of a growing urge for the amelioration of certain conditions in land title transactions. The act provides:

"AN ACT to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof.

The People of the State of Michigan enact:

"Section 1. Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 40 years, shall at the end of such period be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by application of the provisions of succeeding sections of this act and subject also to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed and which have been recorded during said 40 year period: *Provided, however,* That no one shall be deemed to have such a marketable record title by reason of the terms of this act, if the land in which such interest exists is in the hostile possession of another.

"Sec. 2. A person shall be deemed to have the unbroken chain of title to an interest in land as such terms are used in the preceding section when the official public records disclose:

(a) A conveyance or other title transaction not less than 40 years in the past, which said conveyance or other title transaction

* The writer of this paper, while a member both of the general Committee and the Sub-Committee, must not be understood here as purporting to express official committee views. Except as specially stated, the conclusions herein are his own.

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purports to create such interest in such person, with nothing appearing of record purporting to divest such person of such purported interest; or,

(b) A conveyance or other title transaction not less than 40 years in the past, which said conveyance or other title transaction purports to create such interest in some other person and other conveyances or title transactions of record by which such purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of such purported interest.

"Sec. 3. Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to such 40 year period, and all such interest, claims, and charges are hereby declared to be null and void and of no effect whatever at law or in equity: *Provided, however,* That any such interest, claim, or charge may be preserved and kept effective by filing for record during such 40 year period, a notice in writing, duly verified by oath, setting forth the nature of the claims. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of said 40 year period. For the purpose of recording notices of claim for homestead interests the date from which the 40 year period shall run shall be the date of recording of the instrument, nonjoinder in which is the basis for such claim. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(a) Under a disability,

(b) Unable to assert a claim on his own behalf,

(c) One of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

"Sec. 4. This act shall not be applied to bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease, by reason of failure to file the notice herein required. Nor shall this act be deemed to affect any right, title or interest in land owned by the United States.

"Sec. 5. To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all the land affected by such notice which description shall be set forth in particular terms and not by general inclusions. Such notice shall be filed for record in the register of deeds office of the county or counties where the land described therein is situated.

The register of deeds of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each register shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each register shall enter such notices under the grantee indexes of deeds under the names of the claimants appearing in such notices.

"Sec. 6. This act shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons dealing with the record title owner, as defined herein, to rely on the record title covering a period of not more than 40 years prior to the date of such dealing and to that end to extinguish all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event or omission antedating such 40 year period, unless within such 40 year period a notice of claim as provided in section 3 hereof shall have been duly filed for record. The claims hereby extinguished shall mean any and all interests of any nature whatever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental.

"Sec. 7. Nothing contained in this act shall be construed to extend the periods for the bringing of an action or for the doing of any other required act under any existing statutes of limitation nor to affect the operation of any existing acts governing the effect of the recording or of the failure to record any instruments affecting land nor to affect the operation of Act No. 216 of the Public Acts of 1929 nor of Act No. 58 of the Public Acts of 1917 as amended by Act No. 105 of the Public Acts of 1939.

"Sec. 8. No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

"Sec. 9. No interest, claim or charge shall be barred by the

provisions of section 3 of this act until the lapse of 1 year from its effective date, and any interest, claim or charge that would otherwise be barred by said section 3 may be preserved and kept effective by the filing of a notice of claim as required by this act during the said 1 year period."

Increasingly, as years have passed, it has been recognized that sooner or later some step would have to be taken to simplify the problem of land title examinations. The demand that an unbroken chain of title from the Government down to the present be produced has become more and more difficult to satisfy. In general, the longer the period of time covered the larger will be the number of transactions appearing in the chain, and the more transactions there are the greater is the likelihood or possibility that defects and outstanding interests will be found.

The need for some corrective measure was pointed out in a paper presented at the Grand Rapids meeting of the State Bar in September, 1944. That paper was published in the February, 1945 issue of the State Bar Journal. It was pointed out therein not only that the mere lapse of time was creating additional difficulties, but also that since some title examiners are notoriously captious in their criticisms and in the faults they find in title histories, all title examiners were forced, in self protection, to become "fly-speckers."[1] A purchaser of land is normally entitled expressly or impliedly to a "marketable title." Such title, it was pointed out, may, generally speaking, be defined as one that is reasonably safe against probability of attack. The faithful title examiner who finds weaknesses in the chain cannot stop with the exercise of his best judgment as an expert as to whether the proposed title would be held by the courts to be thus reasonably safe; he must go further and speculate on whether some fly-specking examiner in passing on the same title in the future would advise his client that those same weaknesses were so serious that a title clearing proceeding was necessary.[2] To cure or ameliorate such situation, the Bar was urged to sponsor a study of possible remedies.[3]

[1] The longer the chain of title, the greater is the probability that such captious or overly-cautious title examiners will find seeming defects, the clearing of which they advise is necessary.

[2] No title examiner wants to put himself into a position that may lead to an explanation as to why he approved a certain title which a later examiner has rejected. As a result, careful examiners test the gravity of a seeming defect, not by what, in their best judgment, a court would decide, but by what an overly-cautious examiner would conclude. All title examiners thus perforce become "fly-speckers."

[3] Though the Torrens System was not recommended, it was suggested that a

The general interest of the Bar plus the introduction in the legislature of inadequate and inappropriate bills led the Commissioners of the State Bar to adopt the following resolution:

> "RESOLVED, That the State Bar of Michigan approves in principle the desirability of legislation which would simplify land title transactions and render them less expensive, through employment of a basic device to make it unnecessary, in the normal case, for the title examiner to pay any attention to matters in the chain of title that occurred prior to a fixed time in the past, regarded as reasonable, except as the records within such period require such attention.
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> "RESOLVED FURTHER, That the State Bar of Michigan disapproves of Senate Bill 12,[4] because the language thereof is ineffectual to accomplish the apparent purpose of such proposed legislation, and would tend to perpetuate the unmarketability of a title instead of improving its marketability.
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> "RESOLVED FURTHER, That the State Bar Committee on Real Property Law should continue its study of the matters above mentioned, and advise with the proper committees of the Legislature, and report with its recommendations as to proper legislation at the earliest possible time consistent with careful study."

The Committee on Real Property Law consists of seventeen members, entirely too many to promise much progress in bill drafting. The Chairman of the Committee, Mr. T. Gerald McShane of Grand Rapids, appointed a sub-committee of six, including himself, to carry on this work. His wide experience in title matters with a background of thorough preparation and discerning mind, made him a peculiarly valuable head of the committee.

The group was more or less familiar with the comparatively recent legislation in several comparable states designed to remedy the same basic difficulties.[5] It was also mindful of the Ontario legislation,[6] and familiar, in a general way, with the English practice so far as it could be learned from publications. The act contains features that were

thorough consideration of the general problem would necessarily include a study of that system.

[4] Ultimately, in the legislative process, the bill now under discussion was substituted for Senate Bill No. 12.

[5] Ill. Laws, 1941, Vol. 1, p. 854, Ill. Stat. Ann. (Smith-Hurd, Supp. 1944) ch. 83, § 10a; Ind. Acts 1941, ch. 141, § 1, p. 428, Ind. Stat. Ann. (Burns, Supp. 1943) § 2-206; Iowa Code (Reichman, 1939) § 11024; Minn. Laws, 1943, ch. 529; Wis. Laws, 1941, ch. 293.

[6] Ontario Rev. Stat., 1937, ch. 171.

suggested by these sources, but in its general approach, as will be pointed out herein, our act is a departure.

The purpose of the act, as stated in its sixth section, is to simplify and facilitate land title transactions "by allowing persons dealing with the record title owner, as defined herein, to rely on the record title covering a period of not more than 40 years prior to the date of such dealing, and to that end to extinguish all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event or omission antedating such 40 year period, unless within such 40 year period a notice of claim as provided in section 3 hereof shall have been duly filed for record."

It is important to observe that the act is not a statute of limitations,[7] nor is it one narrowing the kinds of interests in land that may be created.[8] It declares, in effect, that a person as to whom certain things are true is a safe person with whom a purchaser or incumbrancer may deal; and to make such dealing truly safe the act cuts off all interests, charges, etc., the existence of which depends upon events, etc., more than forty years in the past, unless they have been kept alive by the simple process of recording a claim thereof within the forty-year period. If, occasionally, a meritorious interest is cut off by the operation of this act, the general benefit resulting from the clearing of land titles amply warrants such effect, as in the case of wiping out of vested rights by operation of the recording acts.

Since the act cuts off old interests (when they are cut off) only in favor of a certain person or persons, it is, of course, vitally important to note who such person or persons are.

The committee began their labors with the idea that a person qualified to own land in Michigan in possession thereof who could show a record title to such land in himself or in himself and predecessors in interest for as long as forty years ought to be, in an overwhelming percentage of instances, a safe person from whom to take a deed or mortgage, and that a title derived from such person should be made safe, subject only to such outstanding interests as appear of record within that forty year period. The idea obviously has some resemblance

[7] The act does not bar mere causes of action, the primary characteristic of statutes of limitations. Under its operation an interest may be extinguished though not assertable by suit.

[8] The Rule against Perpetuities, for example, prevents the creation of certain interests. The current act has no such operation, though in some respects it does accomplish one of the objectives of the rule, the more free alienability of land.

to the "root-of-title" that has played a large part in English land title transactions.

It must be a rare case indeed in which a person has had the ownership, according to the records, of an interest in land for as much as forty years and yet does not really own it. The same may be said of a person who while not having such record ownership in himself for that period, is able to show a connected title of record for that period ending in himself. Even more rare must be the instances of non-ownership of such person when no other person is in antagonistic possession of the land in which the supposed interest exists.

The first two sections of the act are the outcome of the effort to formulate that idea. It will be observed that the language used makes the provisions of the act applicable to "any interest in land"; it is not confined to dealings involving the full fee ownership, but covers any land interest which is the subject matter of the dealing. It will be noted also that the affirmative requirement of possession by the person able to show the forty-year record title gave way to the negative requirement that the land affected shall not be in the "hostile possession" of another.[9] The legal meaning of hostile possession in contrast with permissive possession is surely clear enough. The status, for our purpose, of vacant land was thus made clear.

The bearing of the first two sections upon the often mooted question as to "marketable title" is obvious. No doubt, as time goes on, land contracts, as to this feature, will be drawn with the provisions of this act in mind.

Too much emphasis cannot be placed upon the fact that the third section, under which competing interests may be cut off, operates *only in favor of the person thus declared by the preceding sections to have a "marketable title" and his "successors in interest."* With this in mind, one can the more readily understand what was pointed out above, that the purpose of the act is to simplify and facilitate land title transactions, not to provide anything like a statute of limitations. In an actual or prospective dispute in which it may be thought that this act will play a part, the person hoping to derive some aid from it must satisfy himself as to two facts: (1) Is my party one with an unbroken chain

[9] In the final draft, as will be noticed, this affirmative element gives way to the negative proviso at the end of the first section: "Provided, however, that no one shall be deemed to have such a marketable record title by reason of the terms of this act, if the land in which such interest exists is in the hostile possession of another." Vacant land with no one in actual possession surely cannot be said to be in the "hostile possession" of anyone. The act, therefore, may apply to such unoccupied lands.

of title for forty years as defined in section 2? (2) Is the land in the hostile possession of another person? Unless the first of these questions can be answered in the affirmative and the second in the negative, this act has no application.[10] We believe, however, that it will be helpful in upwards of 95 percent of the potential contests.[11] In cutting off competing claims only as against such person as we here declare to have a "marketable title" and his successors in interest, this act differs from such other American legislation along this general line as we have observed. In this respect, however, the act has some resemblance to the Ontario statute.

It has been the intention of the committee that under the act the person declared by the first two sections to have a "marketable title" and his successors in interest shall hold and take the interest in land in question freed of *all* interests, claims, charges and defects, affording a possible basis for a claim, that depend upon or arise out of "any act, transaction, event or omission" that occurred more than forty years in the past, unless a notice is filed for record during that period as set forth in the third section. This thought is reiterated in the sixth section where it is said that "The claims hereby extinguished shall mean any and all interests of any nature whatever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental." The only exceptions, and they are not very broad, are set forth in section 4.

The members of the committee could think of no other words that would make it any more clear that *all* competing claims, with the exceptions as stated, were to be cut off, unless kept alive by filing the notice of claim for record. The desire was to relieve the title examiner from all concern as to things that happened more than forty years in the past unless the instruments on record during that period have kept the interest alive. Under this act there can be little

[10] It is possible that situations may be met in which each one of two, or even more, persons may be able to give an affirmative answer to the first question. That is, there may be more than one recorded chain of title to a particular piece of land, each one covering forty or more years. No doubt such cases will not be common. When, however, such situation does develop, it seems clear that this act will be operative only in favor of the one whose interest is consistent with the present possession. It is, of course, possible that in this unusual situation no one will be in possession. That surely would be a rare combination. If, however, it should arise, the conclusion would seem inescapable that this act would be of no help. One would have to proceed as if this legislation were not on the book.

[11] Only usage will tell how closely this guess approaches the truth.

or no room for operation of the "fly-specker" as to supposed shortcomings not appearing of record during the preceding forty years; that is, if the point is raised as against a person with the statutory "marketable title" or as against his successors in interest.

No doubt it was unnecessary to provide expressly for an exception in the case of interests of the United States.[12] That would have been implied, for the state legislative power cannot affect rights of the Federal Government. The exception of reversioners is also probably superfluous, but not for the same reason. It was the thought of the committee that a lessor under a long term lease should not be required to file a notice every forty years in order to keep his reversion alive. But it is difficult to think of a factual situation in which the exception would become operative. At any rate that exception does strengthen the point that it is the intent of the act generally to cut off even future interests, vested or contingent, unless evidence of their existence is in the records during the forty-year period.

Aside from reversions underlying leases excepted by section 4, future interests may be wiped out by the operation of the act. Remembering, however, that an interest to be thus destroyed must be incompatible with the interest in land as to which the person identified by the first two sections is declared thereby to have a "marketable title," it probably will be a rare situation in which the destruction will occur. In a very large percentage of instances the interest disclosed by the records as having existed for forty years or more will be consistent with the asserted future interest. Besides, if the contrary is true, those entitled to such future interest may easily preserve it by filing for record the simple notice prescribed by the third section. Provision is even made for filing of the notice by someone on behalf of the claimant. That clearly is designed to provide protection, in the few cases where it might be needed, for unknown or unidentified claimants of future interests.[13]

Interests such as profits and easements, including restrictions on use, often referred to as equitable easements, may be cut off if their existence depends upon transactions more than forty years in the past, and if no notice has been duly recorded. They will be wiped out, however, only in favor of such persons as are specified in the act. That means that if the interest as to which a marketable title is declared to exist is consistent with the continued existence of the easement or profit, as it would be if the recorded forty-year title discloses that the

[12] See section 4, supra p. 46.

[13] In so far as future interests may thus be destroyed, the result is believed warranted by the general good accomplished in the improvement of marketability.

interest was subject to such outstanding burden, the extinguishing effect of the act will not be called into operation. It is thus unlikely that many such easements, etc, worthy of being kept alive will run the risk of extinguishment.

The provisions as to the notice of claim that must be filed to keep alive charges and claims that otherwise would be cut off, are too clear to warrant more than passing reference.[14] To discourage possible filings of unworthy or unfounded notices, the act requires that the notice be verified, thus subjecting the filer to the serious penalties of false swearing. Section 8 fortifies this.

One thing that must not be overlooked or misunderstood is that the act destroys such old claims as are within its operative effect without regard to whether the holder of the "marketable title" (as to whom and his successors the destruction operates) had knowledge or notice of such claims. Knowledge and notice here are not in any sense the equivalent of recording as is normally true in recording generally.

The act makes it clear that it works no changes in the application and operation of legal principles as to recording, adverse possession, prescription, etc., in so far as events and transactions during the forty-year period are concerned. This is covered by the seventh section which also expressly preserves the operation of the existing statutes regarding old mortgages and unreleased dower claims.

It is interesting to speculate as to how the technique of title examinations will be affected. While some examiners may feel that they need ask for abstracts covering only the preceding forty years, it is a fair guess that, commonly, an abstract covering a somewhat longer period will be found desirable. Indeed it is not unlikely, at least for a time, that the customary full abstract will be wanted. Even if it should work out that way, one need not feel any deep distress, for abstractors tell us that a very large percentage of the land in this state is already under abstract. Only actual experience will tell whether examiners will feel that they can safely rely on limited histories of title. In any event his task will be simplified, particularly when he comes to advising as to which of the defects he has found may be safely ignored. It is difficult to think of any defects more than forty years in the past, not saved by

[14] Clearly the filing of the notice will preserve the claim for a forty-year period. Will such initial filing be effective for more than forty years? A reading of section 3 alone might lead one to think that an affirmative answer should be given to that question. When, however, one considers the whole act, particularly section 6 wherein the prime purpose of the legislation is declared to be the making dependable of a forty-year record, it seems entirely clear that renewal notices would have to be filed.

recorded notices, that he will feel should cause his client, the prospective purchaser, any concern.

Title insurance no doubt will be found as useful as it now is. Obviously the insurer will need to take into account fewer possible weaknesses, and if present premiums are fair pay for the risk, it may reasonably be expected that rates will decline, just as fire rates are lowered as better fire protection lessens the risk.

Certainly there should be many fewer proceedings to quiet title. The "fly-specker" has thrived on old defects, and, as pointed out earlier herein, title examiners of a higher character and grade of ability have had to descend in self-protection to the level of the former. Of course, there will be title clearing proceedings, but they will deal with comparatively recent and more substantial defects. The writer of this paper was told by one lawyer, within a week after the bill was approved by both houses that if it became law he would be able to save a client a seven hundred dollar expenditure.

It has been frequentlly asked whether there is any special significance in the period of forty years. There is none. Suggestions varied from sixty years to twenty, and the period provided was deemed a fair compromise. It also is a rough average of the periods in the comparable legislation in other jurisdictions.

Since the act in terms affects interests now outstanding, it was necessary to allow a reasonable time for claimants under such interests to take the steps necessary to their preservation. The final section deals with that. It is well recognized that even statutes of limitations may constitutionally bar remedial action as to rights already in existence, providing a reasonable opportunity is left to assert them. This act, it should be again noticed, is not a statute of limitations; it destroys no rights except as the claimant neglects to record a preserving notice. Surely one year affords an ample opportunity to take such step. It seems pertinent also to observe in this connection that the claim thus required to be preserved is already at least forty years old. In so far as this act operates as an extinguisher of rights, it operates only against very old rights.[15]

[15] Only a small percentage of the outstanding claims or interests that will be extinguished by the operation of this act, unless the proper notice is filed for record, will be causes of action in respect to which some remedial action is available. That is what is back of the statement that it is not truly a statute of limitations. Even as to those claims that are in the shape of causes of action, the act does not set a time limit within which proceedings must be instituted, as is characteristic of statutes of limitations; this statute merely requires that a specified type of notice as to the existence of the claim be recorded in order to keep it alive as against a title declared to

Not the least of the good things in this act is the legislative declaration that under circumstances stated therein one shall be deemed to have a "marketable title," subject only to such interests as are not

be otherwise marketable. It cannot be emphasized too strongly that in so far as this act extinguishes interests, it does so for precisely the same reason that unrecorded deeds are avoided in favor of subsequent purchasers, namely the provision of a consequence sufficiently severe to drive people to give record notice within the forty year period of the claimed interest.

This legislation applies not only to interests that may arise in the future, but also to interests that are already forty years old. A year is allowed, however, for the claimants of such interests to take the necessary step to preserve them. If the act had purported to extinguish such interests without giving a reasonable opportunity for their preservation, no doubt it would have been unconstitutional as to such interests. The only constitutional question here is whether one year affords a reasonable opportunity to prepare and file the preserving notice. As to that, it is believed that only one answer can be given.

It is not uncommon for statutes of limitations, whether new ones or revisions of old ones, to apply to causes of action that already have accrued, and the period of time thus allowed for assertion of such causes by appropriate proceedings is frequently much shorter than the general period provided by the statutes The cases passing on the validity of such legislation are more than a few. In 2 CONSTITUTIONAL LIMITATIONS, 8th ed., 764 (1927) Judge Cooley says:

"All statutes of limitations, also, must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A statute could not bar the existing right of claimants without affording this opportunity: if it should attempt to do so, it would not be a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. It is essential that such statutes allow a reasonable time after they take effect for the commencement of suits upon existing causes of action; though what will be considered a reasonable time must be settled by the judgment of the legislature, and the courts will not inquire into the wisdom of its decision in establishing the period of the legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

The soundness of this expression is attested by scores of cases. It will suffice to refer to a few. In Terry v. Anderson, 95 U.S. 628 (1877), a statute was upheld though it required claimants with existing causes of action to sue within nine months and seventeen days. Under the former law twenty years was allowed. The court pointed out that when the new legislation took effect, the claimants had already let over four years go by. See also McGahey v. Virginia, 135 U. S. 662 at 704, 10 S.Ct. 972 (1890); Fitzgerald v. Scovil Mfg. Co., 77 Conn. 528, 60 A. 132 (1905); Will of Bresnehan, 221 Wis. 51, 26 N.W. 93 (1936). In Turner v. New York, 168 U. S. 90, 18 S.Ct. 38 (1897), a New York statute was upheld, the statute declaring that deeds from the state comptroller of lands sold for nonpayment of taxes should, after having been recorded for two years, be deemed conclusive as to irregularities in assessment, in any action brought more than six months after the statute became effective. The case and its doctrine have been repeatedly approved and applied. Blinn v. Nelson, 222 U. S. 1 at 7, 32 S.Ct. 1 (1911), Holmes, J., observing that "Now and then an extraordinary case may turn up, but constitutional law, like other mortal contrivances, has to take some chances, and in the great majority of instances no doubt justice will be done"; Alexander, Inc. v. United States, 128 F. (2d) 82 (1942); United States v. 25.4 Acres, 52 F. Supp. 75 (1943); Campbell v. Bruce, 231 Iowa 1160, 3 N.W. (2d) 521 (1942); Meigs v. Roberts, 162 N. Y. 371, 56 N.E. 838 (1900). In Mulvey v. Boston, 197 Mass. 178, 83 N.E. 402 (1908), the court con-

cut off by the operation of other provisions. As already pointed out, the only interests, aside from those expressly excepted in section 4, that are left alive and effective are those arising out of transactions

sidered a statute which reduced the period for bringing certain types of actions from six to two years. The act was applicable to existing causes of action, but no special period was expressly allowed for starting suit on such existing causes. It was held that the thirty days that had to elapse before the act took effect was not an unreasonable time for instituting actions; hence the act was valid. In Kentucky the court seems inclined to require that more time be allowed. Berry & Johnson v. Ransdall, 4 Met. (61 Ky.) 292 (1863) (thirty days not sufficient); Pearce v. Patton, 7 B. Mon. (46 Ky.) 162 (1846) (six months, too short). In Krone v. Krone, 37 Mich. 308 (1877), an allowance of one year for suing upon an existing cause of action was held sufficient. In McKisson v. Davenport, 83 Mich. 211 at 215, 47 N.W. 100 (1890), the court said: "Every suitor must have a reasonable time in which to commence an action to enforce his rights, and it is for the Legislature to provide a general rule applicable to all cases falling within a class, and not for the Judiciary to declare what is or should be a reasonable time varying with the circumstances of each case as it arises."

Of course, as pointed out above, the statute here under discussion is not, strictly speaking, a statute of limitations. Surely, however, the constitutional requirement under which a reasonable time must be allowed for asserting existing causes of action cannot have a stricter meaning when applied to a requirement that certain simple steps be taken in order to keep an interest alive as against a recorded chain of title declared by the statute to be prima facie marketable. Indeed, Turner v. New York, supra, may fairly be viewed as a case involving this latter type of legislation. There, irregularities in tax sales were declared unavailing as against a two-year record title, and, as to existing situations, the court allowed only six months for steps to be taken. The important thing to notice here is that the principles applicable to statutes of limitations generally were deemed controlling.

In Austin v. Anderson, 279 Mich. 424, 272 N.W. 730 (1937), the court ruled that Act No. 216, Pub. Acts 1929, 3 Comp. L. 1929, § 13357, 13358, Mich. Stat. Ann. (1937) § 26.692, 26.693, applied retrospectively as well as prospectively. That legislation declared that mortgages more than thirty years past due should be considered discharged of record unless renewed by an affidavit filed in the office of the register of deeds. That conclusion was based largely upon the fact that the third section of the act provided that the operation of the second section (the one requiring the filing of the affidavit) should be deferred for three months. It is only fair to state that Sharpe, J., in his opinion, pointed out that the case then before the court called only for a construction of the act, its constitutionality not being in issue. In the sixteen years since the act became operative, apparently no case before the court has raised any question as to the sufficiency of the three month period. The statute requiring dower claimants as to lands conveyed more than twenty-five years in the past to file a claim of dower within six months after the act became effective in order to keep such claims alive (Act No. 58, 1917, Act 105, 1939) seems never to have been questioned in any reported case. The current act allows four times as much time than did the mortgage act and twice as much as the dower statute. It would be indeed surprising if the court were to declare the present legislation invalid because of the time allowed for filing the statements of claim.

If a statute purported to wipe out interests under circumstances in which the claimant had no opportunity to protect himself, either by suit or by recording a notice, then indeed a different question would be presented. See Groesbeck v. Seeley, 13 Mich. 329 (1865).

It is clear that the granting of special indulgences, if any, to persons under dis-

within the preceding forty years and those earlier ones preserved by recorded notice during that period. That means that no title under the circumstances stated in the first two sections can be held unmarketable because of the existence of claims and defects arising out of events more than forty years ago, unless, of course, the notice of claim has been seasonably recorded.[16]

It certainly was not intended that this statutory marketable title should be the *only* one that might be entitled to such classification. The act does not purport to declare that a marketable title must be one falling within the specifications there laid down, and it would be a tragedy if the legislation were to be authoritatively construed otherwise. As stated above, it seems probable, as time goes on, that land contracts will be drawn to take advantage of this statutory definition.

As any new model of automobile develops mechanical "bugs" under the stress of everyday use, which have to be corrected by changes in design, etc., so it is possible that this act, something new in title legislation, may in use develop unsuspected weaknesses that will need a correcting or clarifying amendment. The members of the committee which labored many hours in the drafting of the bill will look and listen attentively for the signs of weakness. It would be indeed remarkable if they had foreseen and guarded against all the possible difficulties.

Too much emphasis cannot be placed upon the fact that unless notices of the type provided for in this legislation are filed within the next year, a lot of interests in land in this State of Michigan are going to be in danger of extinguishment. Unless landowners and their advisers are alert, not only will many titles be automatically cleared of claimed interests and defects that ought to be wiped out, but a lot of perfectly meritorious interests will fall with them. The door is open and the process is simple for preserving those that deserve to be saved. Let no lawyer claim that he has not been warned. It is important that all possible publicity be given to the existence and operation of this act.

abilities is purely a matter of legislative discretion.

[16] It is not unlikely that for a time after this legislation becomes effective overly cautious lawyers will continue to advise against acceptance of titles with defects more than forty years old, and within the scope of this act. Such reluctance to accept titles may rest in part on lurking doubts, however unsubstantial, as to the constitutionality of the statute. It is, therefore, to be hoped, that, fairly soon, litigation may develop in which it may be possible to get an authoritative decision. It is also to be hoped that some contract vendor may be moved to insist in litigation that a buyer be required to perform and accept a title as "marketable" despite some defect or interest more than forty years old which has not been kept alive by a recorded notice. The sooner these points are ruled on by the court, the sooner this legislation will become truly useful.