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Limitations of Actions Affecting Title to Real Estate

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LIMITATIONS OF ACTIONS AFFECTING TITLE TO REAL ESTATE*

BY H. K. BREHMER**

IT IS the purpose of this discussion to consider some aspects of recent legislation in Minnesota dealing with limitations on actions affecting the title to real estate. It was first enacted in 1943.[1] The most important provision of the statute as then enacted was amended in 1945, and now reads as follows:

"541.023. Limitation of actions affecting title to real estate. Subdivision 1. No action affecting the possession or title to any real estate shall be commenced by any person, corporation, state, or any political subdivision thereof, after January 1, 1946, which is founded upon any unrecorded instrument executed more than 50 years prior to the commencement of said action, or upon any instrument recorded more than 50 years prior to the date of the commencement of the action, or upon any transaction more than 50 years old, unless within 50 years after the execution of such unrecorded instrument or within 50 years after the date of recording of such recorded instrument, or within 50 years after the date of such transaction there is filed in the office of the register of deeds of the county in which the real estate is located, a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction on which such claim is founded, with its date and the volume and page of its recording, if it be recorded, and a statement of the claims made. This notice shall be filed and may be discharged the same as a notice of pendency of action. Such notice filed after the expiration of 50 years shall be likewise effective, except as to the rights of a purchaser for value of the real estate or any interest therein which may have arisen prior to such filing."[2]

The provisions just quoted constituted Section 1 of Chapter 529 of Minnesota Laws of 1943. Chapter 124 of the Minnesota Laws of 1945 left the remaining sections of Chapter 529 unaltered. Since these constitute an integral part of the new statutory scheme imposing limitations upon actions affecting title to real estate, they should be set forth herein. They are as follows:

"Section 2. Actions to be commenced within one year.

All actions founded upon the written instrument or transaction referred to in the notice shall be commenced within one year from

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[1]Minn. Laws, 1943, Chap. 529.

[2]Minn. Laws, 1945, Chap. 124.

the filing of said notice, and unless such action is so commenced all rights under said notice shall terminate.

Section 3. Application of act.

This act does not extend the right to commence any action beyond the date at which such right would be extinguished by any other statute.

Section 4. Construction of act.

This act shall be construed to effect the legislative purpose of allowing bona fide purchasers of real estate, or any interest therein, dealing with the person, if any, in possession, to rely on the record title covering a period of not more than 50 years prior to the date of purchase and to bar all claims to any interest in real property, remainders, reversions, mortgage liens, old tax deeds, rights as heirs or under wills, or any claim of any nature whatsoever, however dominated; 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, unless within such 50 year period there has been recorded some record evidence of the existence of such claim or unless a notice of renewal pursuant hereto has been filed. This section does not apply to any action commenced by any person who is in possession of the real estate involved as owner of the estate claimed in said action at the time when the action is commenced. This section shall not affect any action or proceeding which is now or on January 1, 1944 shall be pending, for the determination of validity of the title to real estate."

It is clear that the purpose of this law is to limit the time within which actions affecting the possession or title of real estate may be brought, and to make it possible, in the examination of abstracts, to rely upon a record title which is at least 50 years old prior to the date of purchase. Its effect is definitely to terminate all claims of any kind affecting real estate titles that are more than 50 years old. The result is that, if a good chain of title can be traced back 50 years, the title is good regardless of the fact that prior to the 50 year period an outstanding conflicting or contrary interest appears. The need for such legislation has been developing throughout the years, and the problem it dealt with was not an isolated one special to one or two communities. This is evidenced by the adoption of similar legislation in several of our neighboring states. The first law of this type was adopted by the Legislature of Iowa in 1931. It reads as follows:

Sec. 11024—Iowa Code.

"No action based upon any claim arising or existing prior to January 1, 1920, shall be maintained in any Court to recover any

real estate or to recover or establish any interest therein or claim thereto against the holder of the record title in possession, when such holder of the record title and his grantors are shown by the record to have held chain of title since January 1, 1920, unless such claimant, by himself or by his attorney, or if he be a minor or under legal disability by his guardian, trustee or either parent shall within one year from and after July 4, 1931, file in the office of the recorder of deeds a statement in writing definitely describing the real estate involved, the nature and extent of the right or interest claimed and stating the facts upon which the same is based."[3]

The State of Wisconsin passed a similar law limiting the time to 30 years.[4] In 1945 the Legislature of Michigan adopted a similar law limiting the time to 40 years.[5]

The fact that four states have already adopted this type of law would indicate a need for this type of legislation. Every one who has ever examined abstracts is continually confronted with insignificant, irritating, small irregularities which are technically defects which require an action to quiet title and which also are so remote that it bothers the conscience of the examiner to insist on an action to quiet title. In Winona County titles are in bad shape. The territory around Winona began being settled between 1850 and 1860. From then on continual transfers of the title were made. In almost every abstract examined are found old tax titles outstanding, incorrect spelling of names, deeds by heirs of estates where the estates of deceased persons have not been probated, deeds from parents to children reserving life estates in the parents, where the parents later died without any death record, and numerous other defects. A great number of these defects originated 50, 60 or 70 years ago. From a practical standpoint no person could successfully base any claim to the real estate or possession thereof on the old defects, yet it is also well known that if the title was passed with these defects the next lawyer might not do so with the result that eventually proceedings to quiet the title would have to be brought.

The problem is particularly serious for persons whose investment in their home represents almost their entire savings. Usually when such a person sells his home he very seldom gets much more than he put into it and to ask a person of this type to spend from $100 to $200 to quiet the title because of old, remote defects presents a serious problem and is actually an injustice to the person. The expenditure of this amount of money is a serious matter to a great

[3]Iowa Code, Sec. 11024.
[4]Wis. Laws, 1941, Chap. 293.
[5]Mich. Acts, 1945, Chap. 200.

number of these people. It is extremely difficult to explain the necessity for an action to quiet title when they themselves can trace the history of their title back possibly 40 years through different owners whom they know, none of whom was ever bothered in his possession of the property by any of these defects. The common question that is asked at that time is "Why is the title any different now than it was in the last 40 years when someone else owned it and the previous owners were never required to do anything about the title?" Insisting on actions to quiet title based on old and remote defects is by no means an asset to the legal profession, particularly where they are common now, because the average layman gets the impression that the lawyers are ganging up on the common man just for the purpose of getting an additional fee. There is some justification for this attitude because lawyers now are becoming a great deal more technical on titles than they have been in the past, and in a great number of instances titles which were passed by lawyers 10 and 20 years ago are now being objected to.

It is obvious that the legal profession owes a duty to the average citizen to assist him in the sale of his home without incurring a large expense when the reason for the large expense is based entirely on old, remote and obviously outlawed defects of which no one could possibly take advantage. Part of the blame for the existence of these old defects can be laid to the lawyers of earlier generations. They were lax in their methods of handling the transfers of real estate and in checking titles, and the lawyers of today are now using their carelessness to require a layman who has no knowledge of the law to pay out a considerable sum of money to correct the old mistakes. They owe a duty to assume some of the blame for the carelessness of their predecessors in the profession by trying to correct or remedy the situation resulting from such carelessness by securing legislation to correct it.

Statutes limiting the time to recover possession of real estate and establishing adverse possession to real estate are of course extremely common. Our present statute provides "No action for the recovery of real estate, or the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestors, predecessor or grantor was seized or possessed of the premises in question within 15 years before the beginning of the action."[6]

The right of the Legislature to pass this type of statute is clear. The Supreme Court of Minnesota has frequently recognized it.

[6]Minn. Statutes, Sec. 541.02.

In *Sabin & Co. v. Carli*,[7] in discussing the statute limiting time in which to bring actions involving recovery of possession of real estate, it stated "The object of the statute is to quiet titles and end disputes. If the plaintiffs have a cause of action in ejectment there would seem to be no good reason why the statute should not run against it, as in other cases where the possession of land is withheld. *It is the policy of the law that parties should assert their claims to the possession of land and rectify their boundaries, within the statutory term.*" (Emphasis supplied.) In *Wood v. Springer*[8] the Court recognized the right of the Legislature to *limit the time* in which actions to recover possession could be brought. It is stated that "The general rules of law as to adverse possession are well settled. It must be actual, visible and exclusive as well as hostile. The doctrine proceeds upon the theory of the acquiescence of the true owner in his disseisen for the full statutory period, hence, the possession which affects him is what appears on the ground itself." The policy supporting such legislation is set forth in *Dean v. Goddard*,[9] wherein it is stated that "Considerations of public policy demand that our lands should not remain for long periods of time unused, unimproved and unproductive. The burdens of government must be met; its educational interests provided for; its judicial, legislative and executive functions maintained; and to do this our real property must be made productive, to the end, among other things, that taxes may be raised and paid from land not subject to continual litigation, *but the titles thereto quieted.*" (Emphasis supplied.)

The cases from other jurisdictions sustaining this doctrine are too numerous to cite.

The Minnesota law on this matter has been summarized in the following language: "The legislature has full authority to enlarge or lessen the time limited for the commencement of actions except that it cannot withhold a reasonable opportunity to appeal to the courts or impair the obligation of contracts or vested rights. The legislature cannot deny a person a reasonable time within which to bring an action. What is a reasonable time is generally a matter for legislative and not judicial determination. Statutes must allow a reasonable time after they are passed for the commencement of suits upon existing causes of action, but what is a reasonable time must depend upon the sound discretion of the legislature, considering the nature

[7] (1883) 31 Minn. 81, 16 N. W. 495.
[8] (1891) 45 Minn. 299, 47 N. W. 811.
[9] (1893) 55 Minn. 290, 56 N. W. 1060.

of the subject and the purposes of the enactment; and the courts will not inquire into the wisdom of the exercise of this discretion by the legislature in fixing the period of legal bar, unless the time allowed is manifestly so short as to amount to a practical denial of justice. No one has a vested right to a mere remedy, or in an exemption from it. The legislature may therefore revive a cause of action on a personal claim against which a statute of limitations has run by a repeal of the statute. The rule is otherwise where the running of the statute gives a vested interest in real or personal property. When the period prescribed by statute has once run, so as to cut off the remedy which one might have had for the recovery of property in the possession of another, the title of the property, irrespective of the original right, is regarded in the law as vested in the possessor, who is entitled to the same protection in respect to it which the owner is entitled to in other cases."[10]

The statute under discussion is in fact but another statute of limitation relating to the title and possession of real estate. Its provisions are extremely reasonable. The period of 50 years seems clearly long enough to pass any test of validity that courts have devised. Any person who has failed to assert or enforce a right in connection with real estate for so long a period can scarcely have considered it very valuable, and any loss he may suffer as a result of the statute would likely be small indeed if it existed at all. The statute should certainly be held valid by a court conversant with the judicially developed doctrine of laches. The statute is also reasonable in its provisions for the protection of all who may have existing causes of action. It applies only to the bringing of actions after January 1, 1946. It is granted that a reasonable opportunity must be given those with existing causes of action to bring suits thereon. But as said in the Court's headnote to *Joseph Kozisek v. C. F. Brigham,*[11] "It is for the legislature to fix such limitations and if a reasonable time is allowed for the commencement of actions upon existing causes of action, such a statute cannot be invalidated as unconstitutional. This Court cannot say that the three months allowed in this case were unreasonable." In *Hill v. Townley*[12] a statute changing the limitation period was to take effect six months

[10] 4 Dunnell's Minnesota Digest, Sec. 5589 (Limitation of Actions). See on the general subject 34 Am. Juris., Limitation of Actions, Secs. 18 and 19.

[11] (1926) 169 Minn. 57, 210 N. W. 622.

[12] (1891) 45 Minn. 167, 47 N. W. 653. See also Streeter v. Wilkinson, (1877) 24 Minn. 288; Russell v. Akeley, (1891) 45 Minn. 376, 48 N. W. 3; State ex rel National Bond & Security Co. v. Krahmer, (1908) 105 Minn. 422, 117 N. W. 780.

after its enactment. It was held valid. In *Fitger v. Alger & Co.*,[13] the Minnesota Supreme Court approved the following statement of Judge Cooley:

"One who is himself in the legal enjoyment of his property cannot have his rights therein forfeited to another, for failure to bring suit against that other within a time specified to test the validity of a claim which the latter asserts, but takes no steps to enforce. It has consequently been held that a statute which, after a lapse of five years, makes a recorded deed purporting to be executed under a statutory power conclusive evidence of a good title, could not be valid as a limitation law against the original owner in possession of the land. Limitation laws cannot compel a resort to legal proceedings by one who is already in the complete enjoyment of all he claims."

The rights of an owner in possession implicitly recognized herein are adequately protected by the statute under discussion. It expressly excludes from its scope "any action commenced by any person who is in possession of the real estate involved as owner of the estate claimed in said action at the time when the action is commenced." Judged by the prevailing constitutional doctrines, any fear that the statute is invalid seems quite groundless.

All of the statutes of the type under consideration are of comparatively recent origin, and there are no decisions on any of them except that of Iowa. It has been construed in *Lane v. Travellers Insurance Co.*,[14] but no question was raised as to its validity in this rather extreme application of the statute. The court in discussing the above statute in relation to barring the rights of two minors who were contingent remaindermen and who acquired their interest before 1920 but who were not of age on July 4, 1932, stated:

"We see no escape from the conclusion that the claim of the minor plaintiffs arose or existed prior to July 1, 1920, and that it is barred by the plain provisions of the Code Section 11024. It may be that the legislature did not intend this provision to apply to such a case as the present. However, as we view it the language of the statute is plain and unambiguous. Nor are we concerned with the policy of the lawmakers in enacting this measure. We may observe, however, that there can be little doubt of the desirability of statutes giving greater effect and stability to record titles. . . . It is well settled that a statute of limitations runs against claims of infants in absence of contrary statutory provisions."

It may be of some importance in appraising the validity of the statute to call attention to our Court's ignoring old existing defects

[13] (1915) 130 Minn. 520, 153 N. W. 997.
[14] (1941) 230 Ia. 973, 299 N. W. 553.

in titles where the issue of marketable title is before it. *Benjamin v. Savage*[15] was a case in which one Henry N. Weiming acquired title to a piece of property through a deed in 1864 and in 1869 this property was sold through a deed executed by Henry N. Wenning. Later a purchaser objected to the title on the grounds of a defect in the above name. The Court stated:

"At the time of the contract between plaintiffs and the defendant this deed had been of record for more than 50 years. Many conveyances depended upon it. No adverse title had been asserted. The plaintiffs were in possession when they made the sale to the defendant and they delivered him possession. On March 17, 1921, plaintiffs and defendant entered into an earnest money contract which provided for the furnishing of an abstract showing title and the execution of a contract. The abstract was furnished. The contract contemplated by the earnest money contract, that here involved, was accepted, and possession was taken and maintained by the defendant under it, and he collected the rent. The defendant is not now when sued for an installment of the purchase price in position to claim the defect in title upon which he relies *and if we go to the merits his claim is not substantial.*" (Emphasis supplied.)

In *Ross v. Carroll*[16] the court held the fact that a deed which had remained unquestioned for more than 40 years fails to show whether the grantor was married or single does not render the title unmarketable as there is no presumption that he was married. In *Howe v. Coates*,[17] the court stated:

"Where the vendor is required to furnish a title good in fact and in law without reference to the record, he may, of course, rest upon the bar of the statute of limitations provided it clearly appears that the entry of the real owner is barred."

It is reasonable to expect this attitude to affect the Court's consideration of the question of the statute's validity.

In conclusion it would appear that the Minnesota law is good and will be upheld by our Supreme Court.

First. The legislature unquestionably has a right to pass a statute limiting the time in which to bring an action, and such a statute is not unconstitutional or against public policy if reasonable, as this statute clearly is.

Second. There is a decided tendency on the part of courts to assist in every way in clearing up or eliminating old defects which at

[15] (1923) 154 Minn. 159, 191 N. W. 408.
[16] (1923) 156 Minn. 132, 194 N. W. 315.
[17] (1906) 97 Minn. 385, 107 N. W. 397.

best are merely technical and afford the person having such right no justifiable legal claim.

Third. The fact that there is a decided need for a law similar to this is evidenced by the fact three states in our vicinity have passed similar laws and the fact that the only time a similar law was before a Supreme Court the validity of such a statute was unquestioned.