Masthead Logo

DePaul Law Review

Volume 5
Issue 2 *Spring-Summer 1956*

Article 15

Property - Equitable Relief Allowed for Improvements Made Under the Mistaken Belief of Ownership

DePaul College of Law

the murderer is thereby precluded from profiting from his crime and yet has not been denied his constitutional rights as regard forfeiture of his estate.

PROPERTY–EQUITABLE RELIEF ALLOWED FOR IMPROVEMENTS MADE UNDER THE MISTAKEN BELIEF OF OWNERSHIP

Plaintiff secured a building permit to construct a dwelling on lot 15 and immediately commenced construction on lot 16, which was adjacent, under the mistaken belief that he was on lot 15. Upon discovering his mistake a month later, he undertook to purchase lot 16 from the owner and continued construction on the dwelling. After a few weeks time had elapsed, and the building was near completion, plaintiff received from the defendant lot-owner a demand to suspend construction, with which he complied. Plaintiff then filed suit in equity, alleging the mistake and praying that defendant be required to purchase the improvements placed on lot 16 or to convey said lot to the plaintiff at its reasonable value. The chancellor's degree sustained plaintiff's prayer, ordering the parties to exchange deeds; and the defendant appealed. The Supreme Court of Florida affirmed the decree of the trial court. *Voss v. Forgue,* 84 So. 2d 563 (Fla., 1956).

At common law, even in equity, improvements of a permanent nature placed on or attached to land without the consent of the owner became part of the realty and title thereto vested in the owner.[1] The rationale underlying the common-law rule, as stated in the Restatement of the Law of Restitution, is that one who intermeddles with the property of another assumes the risk as to his right to do so.[2]

The common-law rule is not wholly consistent with the principles of restitution for mistake; but its harshness to the improver, acting under the mistaken belief of ownership, has been greatly relieved, either in equity or by statute.[3]

The leading case among those following the common-law doctrine, and thus, denying the right to recover for improvements made on another's land in the mistaken belief of ownership, is the frequently cited decision of *Putnam v. Ritchie,* which held that the court was not authorized to introduce a new principle into the law (that of allowing recovery based on mistake) without the sanction of the legislature; and on this basis, the court declined to grant relief to the improver.[4]

[1] McCreary v. Lake Boulevard Sponge Exchange Co., 133 Fla. 740, 183 So. 7 (1938).

[2] Restatement of the Law of Restitution, § 42 (Comment "a").

[3] Ibid.

[4] 6 Paige (N.Y.) 390 (1837).

The first actual rift with the common law occurred in 1841, when, in *Bright v. Boyd,* Justice Story said: "to me it seems manifestly unjust and inequitable, thus to appropriate to one man the property and money of another, who is in no default. The argument, I am aware, is that the moment the house is built, it belongs to the owner of the land by mere operation of law; and that he may certainly possess and enjoy his own. But this is merely stating the technical rule of law, by which the true owner seeks to hold, what, in a just sense, he never had title to, that is, the house." It is not answering the objection; but merely and dryly stating, that the law so holds. But, then, admitting this to be so, does it not furnish a strong ground why equity should interpose, and grant relief?"[5]

The diversity of authority may be pointed up by referring to a case which was decided in the same year as *Bright v. Boyd.* This was the case of *Seymour v. Watson,* where it was said: "that the defendant has placed the fence in question on the land of another by mistake, does not alter the matter; it was no less a part of the freehold for that reason."[6]

In a 1924 case in which the plaintiff, under the mistaken impression that he was building on his own property, erected a house on defendant's land, without defendant's knowledge, the court reaffirmed *Putnam v. Ritchie.* It was declared that if one mistakenly erects a building on the land of another, who knows nothing about it, and cannot, therefore, acquiesce, he has no relief on the ground of mistake only.[7]

In *Hardy v. Burroughs,*[8] decided in 1930, the court, after acknowledging that the weight of authority was to the contrary, followed *Bright v. Boyd,* in granting affirmative relief to the innocent improver. The court here termed the *Bright v. Boyd* case "better-reasoned."

As the law has developed, the split of authority has been a continuing one. The basic reason for this is that while one faction feels that the common law should be tenaciously adhered to, the opposition reasons thusly: in most cases, a decree giving the owner the election of paying for the enhanced value of his land or of releasing the land to the improver on payment of its market value, would result in less hardship to the owner than would result to the innocent improver if affirmative relief were denied.

In a recent case (1950), it was declared that the only way one erecting a building on another's land in the mistaken belief that he owns the land can compel a conveyance thereof to himself, is to prove that the true

[5] 1 Story 478, 4 Fed. Cas. 127, 133 (1841).

[6] 5 Ind. 555, 556 (1841).

[7] Friel v. Turk, 95 N.J.E. 425, 123 A. 610 (1924).

[8] 251 Mich. 578, 232 N.W. 200 (1930).

owner had knowledge of the progress of the work.[9] This holding, in effect, adheres to the common law, because the result is: no relief for plaintiff unless he can prove laches on the part of the defendant.

To illustrate the divergence among the authorities, even at the present time, a 1952 case stated: "where one builds a house on another's land by mistake, a court of equity does not follow the common-law rule denying all relief, but follows the more lenient rule of the civil law, and permits the owner of the land to elect whether to pay the value added to the land by the building, or take the value of the land."[10]

Illinois' position on improvements made on the land of another by mistake has been closely akin to the national outlook. In 1874, the Illinois Supreme Court, in *Mathes v. Dobschuetz,*[11] said that improvements made upon real estate by one who has no title or interest in it, without the consent of the fee owner, become part and parcel of the land, with the title thereto vesting in the owner of the fee. The holding of this court was affirmed in a 1924 case.[12] In 1929, the case of *Olin v. Reinecke* was decided.[13] In that case, the plaintiff built a two-flat building and a two-car garage on lot 34, which he did not own, under the belief that it was lot 33, which he did own. It was decreed that defendant should pay the reasonable value of the improvements, or the property should be sold and the proceeds distributed as decree by the chancellor.

Apparently, Illinois earlier followed the decisions denying relief to the innocent improver, but now seems to conform to the line of cases emanating from Justice Story's opinion in *Bright v. Boyd,* because *Olin v. Reinecke* was affirmed in a 1955 case.[14]

It should be noted that in the instant case, the plaintiff-improver is bringing an action against the defendant landowner for *affirmative relief* for the improvements made by plaintiff. This is mentioned because it is a well-settled rule in equity that if the landowner brings ejectment against the improver, the latter is allowed to counterclaim for the value of his improvements, by operation of the equitable maxim: "[H]e who seeks equity must do equity."[15] In other words, had the plaintiff in the instant case been sued in ejectment by the defendant, the plaintiff would unquestionably have been able to recover on the basis of his counterclaim.

Additionally, many jurisdictions have statutes providing relief against an action of ejectment to a person who has made improvements on

[9] Riggle v. Skill, 9 N.J. Super. 372, 74 A. 2d. 424 (1950).

[10] McCreary v. Shields, 333 Mich. 290, 295, 52 N.W. 2d. 853, 856 (1952).

[11] 72 Ill. 438 (1874).

[12] Nilson Bros. v. Kahn, 314 Ill. 275, 145 N.E. 340 (1924).

[13] 336 Ill. 530, 168 N.E. 676 (1929).

[14] Pope v. Speiser, 7 Ill. 2d. 231, 130 N.E. 2d. 507 (1955).

[15] Jensen v. Probert, 174 Ore. 143, 151, 148 P. 2d. 248, 254 (1944).

another's land in good faith and under color of title.[16] Many jurisdictions have allowed affirmative recovery under one of these Occupying Claimant or Betterment Statutes.[17] The suggestion has been made that the enactment of these statutes may have retarded the development of a broader rule of equitable restitution. "It seems likely that Story's view, which would permit restitution, would have prevailed but for the prevalence of the so-called betterment statutes. As it is, however, the non-statutory law in most jurisdictions has remained as it was originally since most of the situations calling for restitution are within the betterment statutes."[18] Illinois does not have an Occupying Claimant or Betterment Statute.

In a bare majority of the jurisdictions of this country wherein the question has clearly received consideration, support has been given to the rule that, not even in equity can one who has made improvements on the land of another, believing himself to be the owner, recover therefor, as plaintiff, where the owner has been guilty of no fraud, or acquiescence with knowledge, or other inequitable conduct. Therefore, the instant case must be categorized as a strong minority decision.

The actual decree in the instant case distinguishes it, however, even from other minority decisions. In other words, the other cases granting relief to the improver have given the defendant-landowner the prerogative of paying the reasonable value of the improvements, or selling the land at is market value to the plaintiff-improver,[19] while in the *Voss* case, the court decreed that the parties should exchange deeds, upon payment by the plaintiff of a certain sum and court costs. It is interesting to note that when an Illinois Appellate Court proposed an identical decree in 1929, it was overruled by the Supreme Court.[20] The apparent reason for the court's hesitancy to compel an exchange of properties may be found in the old legal bromide that each piece of real estate is unique. This court seemingly rebutted that presumption when it stated that lots 15 and 16 were of substantially the same value and "there is no contention that either of the lots had any peculiar or intrinsic value."

The importance of *Voss v. Forgue* lies in its re-emphasis of a strong, and apparently better-reasoned minority in a phase of the law where a well-defined divergence of authority has existed for more than a century. In addition, the court in this case has provided for the application of a decree that goes to the root of an intricate problem, and solves it equitably—logically—practicably—and progressively.

[16] E.g., Minnesota Statutes, 1941, § 559.08.

[17] Anderson v. Sutton, 308 Mo. 406, 275 S.W. 32 (1925); Kian v. Kefalogiannis, 158 Va. 129, 163 S.E. 535 (1932).

[18] Seavy & Scott's Notes on the Restatement of the Law of Restitution, at page 29.

[19] McCreary v. Shields, 333 Mich. 290, 52 N.W. 2d. 853 (1952); Hardy v. Burroughs, 251 Mich. 578, 232 N.W. 200 (1930).

[20] Olin v. Reinecke, 336 Ill. 530, 168 N.E. 676 (1929).