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Article 34

Adverse Possession--Reduction in Time Required

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States have increased twofold within four years.[16]

Although some may urge that insufficient experience exists upon which to base aerial legislation, still the need to protect the public is so well known that it forms a more than proper groundwork for laws in this field. It was, of course, this need that promoted the instant law. Whether the desired end will be accomplished thereby rests with the future.

FLORENCE S. HERMAN.

ADVERSE POSSESSION—REDUCTION IN TIME REQUIRED.—In the laws of New York for 1932, the legislature has seen fit to amend the Civil Practice Act in relation to adverse possession under a written instrument or judgment.[1] Section 37 now provides that "where the occupant or those under whom he claims entered into the possession of the premises under claim of title, exclusive of any other right, founding the claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and there has been a continued occupation and possession of the premises included in the instrument, decree, or judgment, or of some part thereof, for *fifteen years,* under the same claim, the premises so included are deemed to have been held adversely * * *." Section 262 allows a presumption in favor of the one possessing legal title but such presumption is deemed to have been overcome when the premises have been held and possessed adversely to the title for *fifteen years* before the commencement of the action. The adoption of the fifteen-year limit has been applied to sections 34-5 and 36 also.

It is quite evident from this legislation that a more or less radical change has been inaugurated in limiting to fifteen years action previously allowed twenty. That this modification is the expression of more progressive views on this phase of the law can hardly be denied. The development of the law in this regard has been slow. In fact, the trend in the beginning was to increase instead of decrease the period in which to bring actions against one holding adversely.[2] The earliest legislation is to be found in the statute of 20 Henry 3rd, c. 8, in which an action could not be maintained if the person claiming adversely had so held from the reign of Henry 2d, which was a period of seventy years. In 1275, this period was increased to eighty years by 3 Ed. 1st, c. 39, providing as it did "that the adverse possession barring the action was fixed from the time of Richard the First."[3] This was the duration of time for such actions until the

[16] "Accidents in Civil Aeronautics," *ibid.* p. 34.

[1] GEN. LAWS OF N. Y. (1932) cc. 261-2-3-4-5.
[2] DIGBY, HISTORY OF THE LAW OF REAL PROPERTY (5th ed. 1898).
[3] WALSH, LAW OF REAL PROPERTY (2d ed. 1927).

fixed period of sixty years was established by the Statute 31 Henry 8, c. 2. It was not until the Statute of Limitations, 21 James 1st, c. 16 (1623) that twenty years was recognized as the limited period. And this was the New York limit up to the time of the modifications in question. In England, however, the period of limitation has been twelve years since 1879.[4]

It is interesting to note that in England the statute provides that adverse possession for the twelve years or more gives the possessor title to the property.[5] In New York such possession merely bars the original owner from asserting his claim.[6] But whether the statute gives the adverse possessor title or not he becomes as completely vested with the title in fee as he would upon a conveyance in due form from the owner of record.[7]

The legislature of the state in reducing the time within which the true owner can set up his title aids in the more efficient settlement of conflicting rights. An individual who for fifteen years has held adversely to the true owner, with all the necessary essentials of actual, open, exclusive, hostile and continuous possession, should then be given priority over one who fails to exercise his rights during all this period. To say that fifteen years is not sufficient time to allow the rightful owner to assert his claim is to provide an extension of time that is not only a retarding of the progressive tendencies of our times but an encouragement to retain an indolent attitude in the voicing of one's rights.

WILLIAM B. SMITH.

EQUITY OF REDEMPTION—RIGHT TO REDEEM WITHIN TEN DAYS AFTER SALE IF PAWNBROKER IS HIMSELF THE PURCHASER.—To the oppressiveness, harshness and impracticability of many of the common law principles, courts of chancery owe an indebtedness for their existence. The granting of relief to the unjustly oppressed to whom the common law refused aid constitutes equity's aim.

Perhaps the most noteworthy achievement of chancery concerns itself with mortgages. Dissatisfied with the common law rule that forever lost to the mortgagor his property upon default, equity ignored the law theory which interpreted a mortgage as a conditional conveyance of title, made absolute by a failure to perform the condition.[1] To equity, a forfeiture is to be avoided whenever it is pos-

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[4] STAT. 37 and 38 VICT. c. 57.
[5] *Supra* note 2.
[6] Baker v. Oakwood, 123 N. Y. 16, 25 N. E. 312 (1890).
[7] Barnes v. Light, 116 N. Y. 34, 22 N. E. 441 (1889).

[1] POMEROY, EQUITY JURISPRUDENCE (1881) §§162 and 1179; STORY'S COMMENTARIES ON EQUITY JURISPRUDENCE (13th ed. 1886) §1004; JONES, MORTGAGES (8th ed. 1928) §§9 and 12.