Volume 6
Number 1 *Fall 1971*

*pp.*26-46

Fall 1971

Title by Adverse Possession

Jeremy S. Williams

TITLE BY ADVERSE POSSESSION IN INDIANA

JEREMY S. WILLIAMS*

INTRODUCTION

The study of the acquisition of title to land by long adverse possession is a study both of case law and of statutory provisions. Adverse possession in both civil and common law jurisdictions is derived from a statutory limitation period upon actions for the recovery of land. It is predicated upon case law determining what type of possession will suffice and what the results of an effective possession will be.

The policy of permitting acquisition of title to land by adverse possession is well established. Adoption of some such rules appears to be almost universal.[1] However, there might be some merit in having no limitation rules whatsoever. If there were no such rules, persons against whom claims were brought after a "reasonable" period might be prejudiced. To counter this threat a judicial officer might well be empowered to make a decision about the period within which any action may be brought; this discretion could be exercised on the sole ground of whether prejudice might be suffered by the defendant. Such a system could lead either to arbitrary and capricious rulings which would be to the prejudice of plaintiff or defendant, or could harden into a well recognized set of time limits (embodied not in a statutory code but enshrined in judicial decisions) comparable to what we have now. The latter alternative would have the certainty that we now enjoy, but might be more flexible because of the more ready intervention of the judge. Nevertheless, such a system would not have quite the same clarity, which may come with rigidity, that statutory formulations yield.

THE CONCEPT OF ADVERSE POSSESSION

The effect of any statutory provision which limits the time within which an action may be brought by an owner of land to recover possession of that land is to give a certain status to a person who has had possession for the requisite period. The status is simply one of inviol-

* Professor of Law, Indianapolis Law School, Indiana University.

The author is indebted to Professor Melvin C. Poland and Dean R. W. Polston of the Indianapolis Law School, Indiana University for having read this article in typescript. They are not responsible for any errors which remain, nor do they necessarily hold the views expressed herein.

1. There are several aboriginal customary systems of law which have nothing corresponding to a limitation period.

ability or immunity from attack, a feature common to all limitation periods. Such limitation provisions commonly require that any action must be brought within a specified time period. Thus, the consequence of the statute is to bar legal and judicial remedies not asserted within the specified time. In some cases, such as actions for personal injuries, this is sufficient to settle the matter; but in other claims, such as those involving debt or property, there may remain intact a right without a remedy for its enforcement.[2] Thus, even after the Statute of 1540,[3] the limitation period did not preclude extra-judicial recovery of the property involved. The remedy alone was barred; the right was left intact.

Some common law jurisdictions, in addition to limiting the period during which actions to recover land may be brought, now have statutory provisions extinguishing any title or claim to the property on the part of the dispossessed owner.[4] This occurs because the bare title of the adverse possessor has been coupled with occupation. In jurisdictions which do not have a statute or common law rule directing extinction of the title, it might be expected that a claimant would cast about for alternate methods of recovering his land upon discovering that he had been precluded by his delay from bringing an action. However, recorded cases of out-of-time claimants recovering their property by other methods do not seem to have been common.[5] Furthermore, some jurisdictions that do not have a statutory provision barring the right as well as the remedy have filled the statutory gap with judicial pronouncements that

2. If one who has a personal injury claim is barred from bringing action on that claim, no further legal remedy remains. However, the early common law clearly permitted a statutorily barred owner of land to regain possession of his property in a peaceful manner. If he did so, the right and the remedy could once more be said to have coincided and the owner could legally defend his possession against all other claimants.

This common law rule has been altered by statute. In other jurisdictions, a similar change has been effected by judicial decision. *E.g.*, Cooper v. Tarpley, 112 Ind. App. 1, 41 N.E.2d 640 (1942). Even in early times, the common law remedy of self-help for a landowner was reduced to a limitation period of four days from the date of the ejectment. H. BRACTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE f. 163 (A. Twiss ed. 1878); T. PLUCKNETT, LEGISLATION OF EDWARD I 63 (1962); A. SIMPSON, INTRODUCTION TO THE HISTORY OF THE LAND LAW 30 (1961).

3. Act of Limitation with Proviso, 32 Hen. 8, c. 2 (1540). In the case of recovery of land, the act provided that a demandant who was unable to show a possession or seisin within the limitation period should "from henceforth be utterly barred forever." *Id.* This strong language, however, merely prevented subsequent legal action by the demandant.

4. The first such provision was Real Property Limitation Act, 3 & 4 Will. 4, c. 27, § 34 (1833). American states with statutes directing extinction of the right include California, Colorado, Georgia, Kentucky, Mississippi, Montana, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee and Texas.

5. An example of such extra-curial recovery is found in *Hemmings v. Stoke Poges,* [1920] 1 K.B. 720. In that case, the owner was barred by statute.

the right is nevertheless barred. "When the bar of the statute of limitations has run, a grant to the adverse possessor is presumed, and results in extinguishing the title of the true owner as effectively as if there had been a grant."[6] A statement to the same effect was made more recently in *Echterling v. Kalvaitis*.[7]

> Substantial evidence shows that appellees and their predecessors in title had continuous, open and notorious, adverse possession of land up to an established boundary-line fence for a period of twenty years, which conferred fee-simple title to the strip in question by operation of law, and the original title of appellants was thereby extinguished.[8]

Whether these statements representing the modern law of Indiana are warranted in the absence of a statutory provision is immaterial. It is accepted that the effect of an adverse possession for the requisite period is to render the possessor immune from the suit of the former owner. Since it is improbable that there will be other legitimate claims, the practical effect of a successful occupation will be clear title in almost all cases.

Adverse possession is a possession inconsistent with the title of the true owner. The owner could dislodge the adverse possessor at any time within the limitation period. The fact that he does not may result in the forfeiture of the land. Because these serious consequences may ensue, the rules and presumptions surrounding adverse possession should be examined with care so that the interests of plaintiff, defendant and society as a whole will not be abridged. Constructions and fictions should therefore be approached carefully since they may produce unexpected consequences.

Policy Reasons for Adverse Possession

Allowing adverse possession throughout the statutory period to confer actual title upon the adverse possessor has both advantages and disadvantages. Both social benefit and detriment are derived by allowing established proprietary rights to be upset. Several points may be made with respect to the wisdom of legal rules which permit an adverse possessor to acquire title.

First, it is often said that limitation statutes are statutes of repose.[9]

---

6. 112 Ind. App. 1, 11, 41 N.E.2d 640, 644 (1942).
7. 235 Ind. 141, 126 N.E.2d 573 (1956).
8. *Id.* at 147, 126 N.E.2d at 576.
9. C. PRESTON & G. NEWSOM, LIMITATION OF ACTIONS 2 (3d ed. 1953). The English Law Reform Committee has stated: "Certainty of title is a social need

It is clear that a claim on which no action has been taken for a long time may cause hardship to a defendant. Even in the context of vested property rights, it may be thought that to assert right and title after the passage of a very long time may be immoral. It may even be that a claimant could take advantage of a lapse of time to press a claim that had no merit in the first place.[10] The logical extension of this argument is that those who are dilatory in enforcing their proprietary rights are to be punished by having their property taken from them. However, it should be noted that not all cases of adverse possession involve an unconscionable delay on the part of the owner.[11]

Second, where the law allows an adverse possessor to acquire title, the policy can be said to protect the interest of those persons who utilize the land as fully as possible. Even where the possessor does little with the property, at least he has done more than the owner who, *ex hypothesi,* has done nothing at all. The utilization of land is valuable to society as a whole. While this is perhaps the best argument in favor of adverse possession, there must be some caution to insure that deprivation of an owner's vested property rights does not occur in a stealthy or otherwise unfair way.

The third attribute of a limitation system involving real property is that it fortifies the title of the possessor.[12] It is axiomatic that it

---

and occupation of land which has long been unchallenged should not be disturbed." 14 ENGLISH LAW REFORM COMMITTEE REPORT 12, ¶ 36 (Cmnd. 3100 1966).

10. It has been suggested, both judicially and extrajudicially, that to plead the statute is usually dishonest. O. WEAVER, LIMITATIONS 3 (1939). One English judge has stated: "All I would say is that, if the law does penalise good nature in this way, the sooner it is changed the better." Haywood v. Challoner, [1968] 1 Q.B. 107, 119. The "good nature" penalized was a failure to collect rent from an occupant.

11. In some circumstances, *e.g.,* an encroachment over a boundary, an owner quite reasonably may be unaware of the accrual of a cause of action. If the notion that the claimant who does not comply with the limitation period is guilty of some moral turpitude and therefore ought to be deprived of what would otherwise be his right is to be extended into the sphere of vested property rights, the doctrine may be seen to be analogous to that of estoppel. In both cases, a substantive right is removed by a procedural device. *See* G. SPENCER-BOWER & A. TURNER, ESTOPPEL BY REPRESENTATION 9 (2d ed. 1966). The same sort of inactivity that may cause the limitation period to run against the owner of property may also give rise to an estoppel preventing him from later asserting his right. Silence or inaction usually does not give rise to an estoppel without a legal, not merely a moral or social, duty being imposed upon the silent or inactive party. However, where a person having a right, title or claim to property perceives another acting inconsistently therewith, he may be precluded from later asserting his right against such party. Whereas the conduct of the other party must be sufficiently brought to a landowner's notice in an estoppel, one whose land is being possessed adversely need have no idea of the conduct of the other party. *See generally* Ballantine, *Title by Adverse Possession,* 32 HARV. L. REV. 135 (1918); Bordwell, *Disseisin and Adverse Possession,* 33 YALE L.J. 1 (1923); Goodman, *Adverse Possession of Land—Morality and Motive,* 33 MOD. L. REV. 281 (1970).

12. It is thought unreasonable to expect a defendant to prove his title beyond

becomes increasingly difficult to prove a certain act after a lapse of time. On the other hand, to prove a longer possession of property becomes easier after the effluxion of time. This feature, if employed in a limitation system, can be used to correct errors of conveyancing and may be useful in such matters as boundary disputes. Any simple rule determining ownership which is dependant upon easily discerned criteria should facilitate an accurate and quick appraisal of the relative rights of claimants. This, in turn, should tend to diminish breaches of the peace. This feature is applicable to any legislation which tends to protect innocent adverse possession. Although the title of a deliberate and stealthy adverse possessor is also fortified, it seems morally more justifiable to protect the title of an innocent and mistaken encroacher upon the property of his neighbor. In either case, it is certain that to allow long adverse possession to confer a title will at least permit the extent and character of the ownership to correspond with the facts. The title acquired as the result of a successful occupation will conform with the extent and quality of ownership assumed rather than with deeds or written records, aside from the rather vague tax records, relating to the land.

Finally, with respect to the owner, ten years of inactivity on his part could invariably (except in the case of his suffering from a disability) be said to estop him morally from asserting his title. In other words, it may be asserted that an owner of land has a moral duty to protect it from invasion.

On the other hand, some have argued that it is morally wrong to upset vested property rights.[18] It is said that in its operation, the doctrine amounts to the abrogation of a substantive right by a procedural device. Mere silence or inaction is felt not to afford sufficient justification for depriving a person of his land. There should at least be a positive duty on the silent or inactive party before harmful consequences are visited upon him. This argument is recognized in the doctrine of estoppel which has a similar policy. It is implicit that such a duty ought not be imposed upon a person merely because he owns land.

While the foregoing comments are simply assertions about the

---

the time limit imposed. A. HARDING, A SOCIAL HISTORY OF ENGLISH LAW 47 (1966). Statutory provisions directing extinction of title contemporaneously with the barring of the remedy recognize the interest of the adverse possessor of land and tend to facilitate conveyancing. However, the argument may be made that the doctrine of adverse possession has become more of a threat to certainty of title than a support of it. The doctrine of adverse possession diminishes the reliance that may be placed on documents or records. The argument of conveyancing convenience seems to have been relied upon in the Preamble of the Act of Limitation with Proviso, 32 Hen. 8, c. 2 (1540).

13. 1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1765).

morality or immorality of the status quo, it is possible to take a more tenable approach to the morality of adverse possesson. It may be thought immoral for a landowner to be deprived of land without first having a practical opportunity to defend himself against loss, particularly in situations involving encroachments and boundary mistakes. The argument may be countered with the position that a landowner ought to look after his land.

Classifications of Adverse Possession

Although there are myriad situations in which adverse possession of land may occur, there are four which happen regularly. Because of their frequency, they may profitably be mentioned here.

Encroachment upon neighboring land may take place either intentionally or without design. Although the proposition is difficult to verify, it would appear to be the case that encroachment over a boundary is more likely to be innocent than intentional.[14] Although it will always be an encroachment in the eye of the law for one party to occupy part of his neighbor's land, there is a considerable practical difference between various types of encroachments. Intrusions are often the result of the agreement of landowners that the boundary fence between them should not pass through a piece of land useless for farming, such as a wood, thicket or gulley. In a city or heavily populated district the reason for noncompliance with the boundary is more often a mistake in surveying or a misdescription. This may be very costly in terms of the use to which the land is presently being put.[15]

Adverse possession may arise from situations in which a formal relationship at one time existed between the parties. These might include circumstances where a licensee, tenant or mortgagor holds land adversely to the interests of his licensor, landlord or mortgagee. Occasionally, a purchaser of land enters into possession under an incomplete agreement for sale, or the vendor does not complete a transfer of the land to the purchaser. In these cases, the holding of the purchaser, tenant or mortgagor may well be adverse. In such situations, adverse possession throughout the limitation period would entitle the occupant to claim a transfer of

14. On the importance of the intention of an occupier see Goodman, Adverse Possession of Land in the Law of Limitation of Actions, 1967 (unpublished thesis in University of Manchester Library). *See also* Chisholm v. Hall, [1959] A.C. 719; Hopgood v. Brown, [1955] 1 W.L.R. 213.

15. An encroachment of one foot by a ten story building situated in a business district may result in a rental price increase of $100,000 or more over the life of the building. Some interesting figures regarding the cost of loss relevant to title insurance may be found in Roberts, *Title Insurance: State Regulation and the Public Perspective*, 39 IND. L.J. 1, 5 (1963).

the title to him. In these cases the onus will be on the claimant to demonstrate that a possession which began by being derivative has become adverse and independent.

Occasionally, a situation arises in which an adverse possessor occupies land in an ostensibly deliberate manner. When this happens in the case of abandoned land, it is manifestly beneficial to society since it returns otherwise unused land to productivity. If possession is referable to a mistake, it may not be so advantageous to society as a whole, since the land might have been utilized by the owner had he been aware of the true facts.[16]

Other informal arrangements may lead to an adverse possession. Such may be the case where a party with permission, for example, a licensee of some type, holds adversely to the person strictly entitled. Thus, one who was originally tolerated or encouraged to occupy land may eventually claim the land for himself. An example of this, occurring with some regularity, is where one relative farms land alone for a deceased owner although several other relatives are entitled to a share in the land. At first, the farmer may share out the proceeds and profits of farming the land. But after some time, he may realize that he has put much effort into working the land and has made various improvements. He may then morally regard himself as the one solely entitled. Whether he is legally entitled will often depend upon the quality of his possession, *i.e.,* whether he held adversely to the interests of the other persons entitled for the requisite period.

Such informal arrangements, and others, are not uncommon. Rarely, however, do they lead to adverse possession between the original parties to the informal arrangement. A remote party who succeeds to the interest of the beneficiary of the informal agreement is usually the party claiming to have adversely possessed. While feelings of gratitude exist in the original occupier of the land, these may not extend to his successors. Thus, in *Hughes v. Griffin,*[17] a man conveyed land to his nephew, the plaintiff, although the grantor and his wife (the defendant) continued to live there. After the grantor's death, the plaintiff brought action to recover the land from the defendant. The defendant argued that both she and her husband had lived on the property for twelve years subsequent to the conveyance of the property and that she had, therefore, acquired

16. If the possession is by mistake, the benefit to society from use of the land may be outweighed by the detriment suffered by the dispossessed landowner. Examples of such possession are noted in Williams, *Title by Limitation in a Registered Conveyancing System,* 6 ALTA. L. REV. 67 (1967). *See also* Ruoff, *First Registration of Titles Acquired by Adverse Possession,* 27 CONVEY. (n.s.) 353 (1963).

17. [1969] 1 All E.R. 460. *Accord,* Haywood v. Challoner, [1967] 3 All E.R. 122.

title by limitation. The English Court of Appeal held that she had occupied the land as a licensee of the plaintiff and, as such, had been incapable of acquiring a title by long possession.

Adverse possessors may also be classified according to their state of mind. The state of mind may have substantial consequences on the legal nature of the possession and the ease with which it may be proved. A classification on the basis of the state of mind of the adverse possessor might be threefold.

First, there is the intentional squatter. Such a person deliberately encloses the land of another, fences it and uses it as his own. If he does so successfully, his title by adverse possession is often easily proved. Next, there is the casual squatter, a tentative trespasser who later alters and increases his occasional use of land. His acts of possession become more intense and deliberate. He becomes less cautious and may use the land in a permanent way or spend money upon it. There is some difficulty in discovering when he first occupies adversely to the owner. In Indiana this may often be determined by the time such possessor first pays taxes upon the land.[18] However, this may not always be taken as the point of origin of the adverse possession since the tax records usually are not sufficiently precise in describing the tract of land affected. Finally, the innocent squatter may be a man who believes land to be his own. If his assumption is mistaken, he will nevertheless acquire the land at the expiry of the limitation period. It is common for encroachments to be made in this fashion.

Whatever the state of mind of an adverse possessor, his possession must conform to certain minimum standards. Chief among these are the requirements concerning the length and continuity of the possession.

The Elements of Possession

Length

The period within which an action may be brought to recover land may vary from one jurisdiction to another, but it is always a relatively long period.[19] In Indiana since 1951, the Code of Civil Procedure has provided that actions for the recovery of possession of real property be

18. In Indiana and some other states, possession is not adverse until taxes on the land are paid by the possessor. *See* note 51 *infra* and accompanying text.

19. *See* Taylor, *Titles to Land by Adverse Possession*, 20 Iowa L. Rev. 551 (1935). One common feature of extinctive limitation provisions is that the period itself is long. Avowedly acquisitive limitation periods often tend to be shorter. Indiana may be argued to have the latter since the law requires that an occupier of land pay the taxes upon that land before his possession will be considered adverse.

brought within ten years of the accrual of the cause of action.[20] There are several other statutory limitation periods relating to real property in addition to this general period.[21] One such general limitation period[22] provides that actions for injuries to property other than personal property shall only be brought within six years of the accrual of the cause of action. The distinction between the applications of these two statutory periods is, however, easy to make. If the remedy sought is a return or recovery of real property, the applicable statutory period will be ten years, whereas if the gist of the action is recompense for damage to the real property, the period will be six years.[23] In the latter case, namely an action in trespass limited by the six year period, the cause of action may accrue from day to day in the case of a continuing trespass, thereby enabling a new action to be brought each time a new alleged act of trespass is committed.[24]

Acquisition of title by adverse possession is predicated upon the possibility that the owner might have brought an action to recover the property within the limitation period but did not do so. Once a cause of action has accrued, time runs inexorably irrespective of any physical or legal difficulty attendant upon bringing an action. This is true even though the owner may have been under some legal restraint or might have found bringing the action impractical.[25] Such practical impediments might well be taken into account if a shorter limitation period were in effect. To do so would, perhaps, avoid charges of unjust treatment of a landowner who was unaware of a neighbor's encroachment over the boundary line.

Continuity

In order to be valid, the adverse possession must exist continuously

20. 34 IND. CODE art. 1, ch. 2, § 2 (1971). *See* M. STREET, INDIANA TITLE TO REAL PROPERTY § 348 (1933); 2 A. WOOD, LIMITATIONS 1218 *et seq.* (4th ed. 1916).

21. *E.g.*, the third, fourth and sixth clauses of 34 IND. CODE art. 1, ch. 2, § 2 (1971) deal with real property, as does the third clause of 34 IND. CODE art. 1, ch. 1, § 1 (1971). Certain of the clauses relate only to the sale of real property on execution of judgment. Even if these are not considered, there are still far too many statutory limitation periods relating to real property. Some measure of order should be synthesized from the confusion which now surrounds both limitation periods and suits to quiet title. *See* Note, *Quiet Title Actions in Indiana: Suggested Reform,* 39 IND. L.J. 807 (1963).

22. 34 IND. CODE art. 1, ch. 2, § 1 (1971).

23. For the application of this distinction compare the following cases: Matanich v. American Oil Co., 139 Ind. App. 145, 216 N.E.2d 359 (1966); Buckel v. Auer, 68 Ind. App. 320, 120 N.E. 437 (1918); Seigmund v. Tyner, 52 Ind. App. 581, 101 N.E. 20 (1913); Southern Indiana Ry. Co. v. Brown, 30 Ind. App. 684 (1903).

24. Cooper v. Crabtree, 20 Ch. D. 589 (1882).

25. Moses v. Lovegrove, [1952] 2 Q.B. 533. This would seem to be so on principle notwithstanding the decision in *State ex rel. Pink v. Cockley,* 110 Ind. App. 417, 37 N.E.2d 284 (1941).

throughout the limitation period. An abandonment and resumption of possession will not constitute continuous possession. The reason is generally said to be that there must be someone against whom an action may be brought. Any such break in an otherwise continuous adverse possession will interrupt the possession at the time at which the hiatus occurs.[26] If the interruption occurs before completion of the statutory period, then a new taking of adverse possession must occur and be completed before the remedy of the owner is barred. The character which the possession must assume in order to be treated as legally continuous may depend upon the climate and other physical characteristics of the land. This is really an aspect of the quality of possession of the land. Clearly, if the land in the vicinity of the adversely possessed land is ordinarily used for farming and is covered with snow for three months of the year, it would be unreasonable to expect an adverse possessor to exercise possession during those three months. Failure to exercise possession under such circumstances would not be regarded as a discontinuance or abandonment of possession.[27]

Normally, the application of the rules of continuity will require that one adverse possessor occupy the land for the whole of the statutory period. In certain circumstances, however, it is possible for two or more persons to effectively possess the land consecutively for the statutory period. Under this doctrine, two or more successive possessions, each of less than ten years, may be "tacked" together to make one possession of more than ten years. The leading Indiana case on this doctrine is *Cooper v. Tarpley*.[28] In that case the court stated:

> It is settled that the statutory period of possession need not be maintained by one person. Successive periods of tenancy by different tenants may be tacked to constitute the necessary period for adverse possession to defeat the title of the record owner, if each of the successive tenants claimed to hold and was in possession, under his predecessor. . . .
>
> Appellants insist that privity of title which comes from transfer of title or assumed title by deed, by law, or by descent is necessary for tacking successive periods of adverse possession. We do not so understand the law. The requisite privity is

26. Generally, if an intruder relinquishes possession of land without acquiring title to it, the rights of the original owner remain unscathed. Handley v. Archibald, 30 Can. S. Ct. 130 (1899); Trustees, Executors and Agency Co. v. Short, 13 App. Cas. 793 (1888).

27. Coffin v. North American Land Co., 21 Ont. 80 (1891).

28. 112 Ind. App. 1, 41 N.E.2d 640 (1942).

privity of possession and denotes merely a succession of relationship to the same thing.[29]

Thus, it appears that no formal relationship between successive adverse possessors is necessary so long as their periods of possession are sequential *and* upon the same land. That is, successive possessors should possess without interval and should succeed in relationship to the parcel of land. The rationale of requiring privity between successive possessors may be to insure that there is a competent defendant throughout the period.[30]

An admission of non-entitlement by an adverse possessor during the running of the limitation period will have the effect of interrupting the period. This means merely that the adverse possessor may not rely on a possession when he, in writing, disavows or negates any claim to the land. Admittedly, the true juridical nature of the admission may be to cast doubt on the quality of the adverse possession, but the effect of the admission is one of interruption.[31]

Disability

Where the person against whom the adverse possession is taken is, at the time of such taking of possession, suffering from a disability, the effect is to extend the limitation period of the statute.[32] A disability must occur at the outset of the period in order to postpone the running of time.[33] In Indiana, the limitation period is inoperative during the existence of a disability which affects the plaintiff at the time of accrual of the cause of action; this is a standard feature of statutes of limitation.[34] Commonly, the time within which action may be brought after cessation

29. *Id.* at 8-9, 41 N.E.2d at 643.

30. This may adequately explain why successive occupiers of a particular office or employment may be permitted to add their successive possessions where the office is a corporate sole. *See* Haywood v. Challoner, [1967] 3 All E.R. 122 (C.A.).

31. In Indiana, the admission or acknowledgment must now be in writing. 34 IND. CODE art. 1, ch. 2, § 10 (1971). In an early case involving such an admission the court stated that the "admission was sufficient to toll or interrupt the running of the statute of limitations, if it had not fully run." Howard v. Twibell, 179 Ind. 67, 75, 100 N.E. 372, 375 (1912).

32. The ordinary limitation period is suspended during the existence of the disability. This must be the result, for if the owner's right to bring an action is not barred, the adverse possessor cannot be said to have gained a title against such owner, notwithstanding the comments of the Appellate Court of Indiana in *Triplett v. Triplett*, 135 Ind. App. 302, 316, 193 N.E.2d 662, 669 (1963). The court must be deemed to have decided that case on the ground that there was no disability when the adverse possession was first taken, and not on the ground that a disability would never result in an extension of the limitation period.

33. Willis v. Earl Howe, [1893] 2 Ch. 545.

34. Taylor, *Titles to Land by Adverse Possession*, 20 IOWA L. REV. 738 (1935).

of the disability will be somewhat shorter than the ordinary limitation period for the class of action involved. In Indiana, the time allowed for the bringing of an action begins at the time of removal of a disability and is two years.[35] This also is a standard solution for limitation statutes based upon common law.[36]

The common law affords relief only to a potential plaintiff. It does not allow a successor to take advantage of a disability of his own if the cause of action did not actually accrue to the benefit of such successor, as it *ex hypothesi* did not.[37] Furthermore, as mentioned above, any disability which occurs after first accrual of the cause of action will not have the effect of suspending in any way the running of the limitation period.[38] If two or more disabilities exist at the same time upon the same potential plaintiff, he will have the benefit of the longer of them. But only one disability will be allowed to postpone the running of time. Cumulative and successive disabilities will not be permitted to extend the time for bringing suit.[39]

The Character of Possession

Whether or not a possession will be sufficient to enable the possessor eventually to become the owner depends upon two factors, the *animus* and the *corpus*. The expressions refer to the intent with which possession was taken and the physical characteristics of the occupation. Both physical and mental elements must be present for possession to exist.[40] However,

35. The pertinent statute states: "Any person being under legal disabilities when the cause of action accrues may bring his action within two (2) years after the disability is removed." 34 Ind. Code art. 1, ch. 2, § 5 (1971). Thus, where an adverse possession is begun against an owner of land who is under a recognized disability, the owner's action for recovery of the land may be brought within two years following removal of the disability. This is true even though the disability continues for longer than the normal ten year limitation period.

36. Where a disability coincides with what would otherwise be the beginning of the limitation period, the running of the period is simply suspended. There is no interruption of the period once it has began to run. Provision for such an interruption may be found in certain civil law jurisdictions. *See* Taylor, *Titles to Land by Adverse Possession,* 20 Iowa L. Rev. 738, 759 (1935); Walsh, *Title by Adverse Possession,* 17 N.Y.U.L.Q. Rev. 44, 78 (1939).

37. For example, an adverse possessor enters land. The limitation period begins to run. If the owner dies and devises the land to a person under disability, the period continues to run and is neither stopped nor interrupted. The devisee will be barred from recovery when the period has run, and his disability will have had no effect.

38. In some states the occurance of a disability after the accrual of the cause of action *will* have the effect of suspending the running of the period. In Indiana, however, such subsequent disabilities will not affect the running of time. Terre Haute, I. & E. Trac. Co. v. Reeves, 58 Ind. App. 326, 108 N.E. 275 (1915).

39. Walker v. Hill, 111 Ind. 223, 12 N.E. 387 (1887); Wright v. Kleyla, 104 Ind. 223, 4 N.E. 16 (1885).

40. *See* 2 F. Pollock & F. Maitland, Possession in the Common Law 50 (1890).

either element may supplement the other in that acts may be evidence of a particular intention and an expressed intent may give color to otherwise equivocal acts.[41] Nevertheless, mere assertions of ownership or mere isolated acts of trespass will not, by themselves, amount to a taking of possession.

Intention

The requisite intention of the adverse possessor varies according to what is exacted by the law of the jurisdiction within which he possesses land. The law of England specifies that the possession must be "adverse," but this is not a very stringent requirement.[42] In some cases, such as a possession taken under a void lease, there is even a presumption that the possession is adverse.[43] Nevertheless, the basic position in England remains that there should be an expressed or implied assertion of a right to possession.[44] It is this refusal to look at the state of mind of an occupier which allows the theory of competing ownerships of land to exist at common law. It is axiomatic that a wrongful possessor of land is the owner as against all the world except one with a better title based on an earlier possession which he has not abandoned.[45] This theory of competing ownerships in land exists in all common law jurisdictions in which there is no system of registration of title to land[46] or other statutory displacement of the rule. The system of registration of title

41. Thus, a deed or other document asserting title or other expressions of intent or right may affect the character of a possession so as to render it adverse. Sinclair v. Gunzenhauser, 179 Ind. 78, 98 N.E. 37 (1913). Likewise, a parol agreement indicating the limits of possession of the parties may have that same effect in law. Adams v. Betz, 167 Ind. 161, 78 N.E. 649 (1906).

42. *See* Goodman, *Adverse Possession of Land—Morality and* Motive, 33 MOD. L. REV. 281, 284 (1970); Goodman, *The Morality of Adverse Possession*, 31 MOD. L. REV. 82 (1968); Goodman, Adverse Possession of Land in the Law of Limitation of Actions, 1967 (unpublished thesis in University of Manchester Library). However, it is suggested that there is a real moral difference between the acts of a deliberate land stealer and the mistaken encroacher. The policy of the law in some jurisdictions is to discourage the former while attempting to give security to the latter.

43. Magdalen Hospital v. Knotts, 4 App. Cas. 324 (1870).

44. *See* Hughes v. Griffin, [1969] 1 W.L.R. 23; Williams Bros. Direct Supply Co. v. Raftery, [1958] 1 Q.B. 159; Patterson v. Reigle, 4 Pa. 201 (1846).

45. Thus, at common law, a title of some strength could be obtained simply by gaining possession of the land. This runs counter to the theory that land may have but one "true owner." *See* F. LAWSON, INTRODUCTION TO THE LAW OF PROPERTY 40 (1958); Hargreaves, *Terminology and Title in Ejectment*, 56 L.Q. REV. 376 (1940); Holdsworth, *Terminology and Title in Ejectment—A Reply*, 56 L.Q. REV. 479 (1940); Wiren, *The Plea of Jus Tertii in Ejectment*, 41 L.Q. REV. 139 (1925). Naturally the aim of the Torrens system of registration of title to land is to install one person as the "true owner."

46. Jurisdictions in Canada and Australia do have such schemes. In those jurisdictions, ownership is conferred by an effective registration and by no other method.

to land replaces in part the common law doctrines of ownership based on possession.

In some jurisdictions it is necessary for the occupier to have some color of title or of right in order for him to acquire title by adverse possession.[47] Such a requirement naturally tends to prefer an occupier with an innocent or mistaken state of mind over the deliberate evictor. Where a particular state of mind is required of the adverse possessor, it may be the result of a statute or the common law of the jurisdiction. Both methods were exemplified in *Stark v. Stanhope*.[48] In that case, the law of Kansas was declared to be that a claim of title by adverse possession could be based on belief of ownership on the part of the possessor.

It is clear that the courts will often be in the position of having to pass on which of two or more parties has the better right to possession,[49] but this is not at all the same as saying that possession cannot be adverse without a claim of right by the possessor. There may well occur cases in which an adverse possessor has been consistently in possession for many years without a claim of right and no other person is available to dispute his claim. The adverse possessor should be able to acquire title in such circumstances. All the social arguments in favor of adverse possession dictate that such a possessor should be quieted in possession. Thus, several states, *e.g.*, New York, have emasculated the statutory or common law requirement of color of title so as to validate as an adverse possession any open and continuous occupation that might be taken by an owner

47. Alabama, Georgia, New Mexico and South Dakota require either color of title or good faith. *See* Taylor, *Titles to Land by Adverse Possession*, 20 IOWA L. REV. 551, 553 (1935); Walsh, *Title by Adverse Possession*, 16 N.Y.U.L.Q. REV. 532, 535, 553 n.54 (1939); Walsh, *Title by Adverse Possession*, 17 N.Y.U.L.Q. REV. 44 (1939). Such requirement is also a characteristic of such civil law systems as those in South Africa and Quebec. The origin of these requirements clearly is to be found in the *justa causa* and *bona fides* necessary for *usucapio* in classical Roman law.

48. 206 Kan. 428, 480 P.2d 72 (1971). There, a common law requirement of hostility was statutorily amended to include a belief of ownership or a claim knowingly adverse.

49. While it is suggested that this situation occurred in *Rickard v. Williams*, 20 U.S. (7 Wheat.) 59 (1882), Justice Story asserted that possession would be prima facie evidence of ownership only where accompanied by a claim to the fee. *Id.* at 105. Since this was a decision of the United States Supreme Court, it has been thought to be the *fons et origo* of the requirement of color of title. The notion that a claim of right is essential may now be discounted in the great majority of states, although the idea is still to be found in some jurisdictions where a boundary dispute is involved. *See* Walsh, *Title by Adverse Possession*, 16 N.Y.U.L.Q. REV. 532 (1939); Walsh, *Title by Adverse Possession*, 17 N.Y.U.L.Q. REV. 44 (1939). It has been said that the American courts, by eliminating the need for a claim of right, have established a doctrine of gaining title by prescription similar to the doctrine of acquiring easements by prescription. Bordwell, *Disseisin and Adverse Possession* (parts 1-3), 33 YALE L.J. 1, 141, 285 (1923-24).

of the land in ordinary circumstances.[50] This is now the dominant view despite judicial pronouncements regarding the relevance of the motive, intention or bona fides of the possessor.[51]

In Indiana there is no statutory provision requiring a claim of title, or its equivalent, before a possession may be said to be adverse. Furthermore, the judicial authorities are to the effect that color of title is not necessary to constitute an adverse possession.[52] Thus, Indiana may be said to subscribe to the dominant and logical view in that it does not promote non-adverse possession. However, it should be noted that somewhat the same effect as requiring color of title is achieved by the provision that a possessor, to be in adverse possession, must pay taxes due on the land so possessed.[53]

Some jurisdictions have both systems and make a distinction between occupation with color of title and occupation without it.[54] Some of the states provide a special short period of limitation for actions to recover land in certain cases such as from persons "in peaceful and adverse possession thereof under color of title."[55] While the shorter period is allotted to occupiers with color of title in such jurisdictions, a longer statutory period serves as the general limitation period for all other cases. These may be referred to, respectively, as acquisitive and extinctive limitation periods. The provision of two separate periods, one a short one with stringent requirements and the other a longer one with rather lax requirements, is usual in civil law systems and has its counterpart in Roman law.[56] Jurisdictions in which such a dual system operates may

---

50. *See* notes 48 *supra* and 52 *infra.*

51. *See* note 52 *infra.*

52. Terry v. Davenport, 185 Ind. 561, 112 N.E. 998 (1916); Herff v. Griggs, 121 Ind. 471, 23 N.E. 279 (1890); Roots v. Beck, 109 Ind. 472, 9 N.E. 698 (1887); Jeffersonville M.I.R. Co. v. Dyler, 60 Ind. 383 (1879); Hargis v. Congressional Tp., 29 Ind. 70 (1867). *Contra,* Maple v. Stevenson, 122 Ind. 368, 23 N.E. 854 (1890). The point seems to have been finally settled by the Appellate Court of Indiana in *Cooper v. Tarpley,* 112 Ind. App. 1, 41 N.E.2d 640 (1942). Judge Flanagan stated that "[i]t is not essential to the acquisition of title by adverse possession that the entry should be under color of title. The absence of color of title only affects the extent of possession." *Id.* at 7, 41 N.E.2d at 642.

53. 32 IND. CODE art. 1, ch. 20, § 1 (1971). *See* Farabaugh & Arnold, *Commentaries on the Public Acts of Indiana, 1927—II. The Adverse Possession Act,* 4 IND. L.J. 112 (1928); Gavit, *In Defense of the Indiana Adverse Possession Act of 1927,* 4 IND. L.J. 321 (1929).

54. *See* note 55 *infra.*

55. TEX. REV. CIV. STAT. arts. 5507, 5508 (1958). *See also* Larson, *Limitations on Actions for Real Property: The Texas Five Year Statute,* 18 SW. L.J. 385 (1964); Larson, *Disabilities and Actions for the Recovery of Land in Texas,* 16 SW. L.J. 590 (1962); Larson, *Texas Limitations: The Twenty Five Year Statutes,* 15 SW. L.J. 177 (1961).

56. In classical Roman law, *usucapio* of land could be accomplished in two years if both good faith and a claim of title were present. The doctrine of *longissimi*

often have some difficulty in deciding whether one who encroaches on his neighbor's land had color of title. In connection with this inquiry, general presumptions as to the intent of an encroaching land owner have been made. Whereas some have opined that the encroaching owner is presumed to occupy under color of title all that he in fact occupies, others have concluded that the true presumption is that an owner of land makes claim only to that tract of land which he actually does own.[57] Since an ordinary owner does not usually address his mind to the possibility that the actual boundary does not correspond with the legal description, both presumptions contain an element of fiction. There would appear to be equal merit in either presumption. Policy grounds may favor acknowledging the title of the record owner if possible.[58]

Physical Character

Many rules affect the physical nature of the adverse possession. The adverse possessor is required to use and enjoy the land involved. The degree of use should correspond to the nature of the land, and only the tract of land actually occupied may be acquired. The degree of use required will depend upon the physical characteristics of the land and the way in which a reasonably prudent owner would exercise possession over such land.[59] Either climate or the physical nature or situation of the land may justify a use and enjoyment less full than it might otherwise be.[60] It is always open to the adverse possessor to occupy the land in a way that is unusual or uncontemplated by the average owner of similar land, provided, however, that the possession is deemed to be adequate by the court.[61] It is also said that the possession ought to be exclusive.[62] This is

---

temporis praescriptio developed in later Roman law to supplement the earlier rules of *usucapio*. This subsequent doctrine conferred ownership upon one who held continuously for thirty years.

57. *See* note 52 *supra*.

58. *See* note 13 *supra* and accompanying text.

59. Walsh, *Title by Adverse Possession*, 16 N.Y.U.L.Q. REV. 532, 542 (1939).

60. In *Worthley v. Burbanks*, 146 Ind. 534, 45 N.E. 779 (1897), the land in dispute consisted of a few sand ridges and hills interspersed with sloughs which were wholly unproductive and unfit for any kind of cultivation. The Supreme Court of Indiana said:

> We think that the facts found by the jury establish every use of the land of which it was capable; that it was such use as was made by the owners of like lands; that the appellant's dominion over the land was such that, under the rules of law already stated, Burbanks was chargeable with notice thereof.

Id. at 544, 45 N.E. at 789.

61. The making of improvements is usually regarded as evidence of possession. However, whether a particular act or structure will be termed an "improvement" depends upon a very subjective notion of what enhances land. Even acts of despoliation and waste might theoretically be evidence of possession if they occur over a sustained period and are confined to a specific area.

62. *See* Worthley v. Burbanks, 146 Ind. 534, 45 N.E. 779 (1897); Cooper v.

partly because only one party will be able to act with respect to the land as an owner would. With regard to any given tract of land (on the assumption that the owner is going to lose his right to recover it), the court will not be placed in the invidious position of having to decide which of two competing adverse possessors is the more worthy. The impasse is resolved by concluding that neither co-possessor had accomplished sufficient acts of adverse possession, and the owner of the land is not barred. The requirement of exclusiveness is founded, at least in part, on the assumption that an owner would exclude others since he has the right to do so.

It is generally said that the acts of the adverse possessor must be open and notorious.[63] All that this requirement amounts to is that the owner, if reasonably diligent, should be able to discover the presence of the adverse possessor. A furtive, hidden, concealed or stealthy use of the property will not suffice for several reasons. First, a possessor who attempts to remain concealed impliedly acknowledges the title to be in another. In addition, his possession does not assert that degree of dominion over the land which is deemed requisite for a successful adverse possession. Therefore, the requirement of notoriety is nothing more than that there should be an adequate possession. The adverse occupier need not give notice, express or implied, to the owner of the land. His presence on and acts of dominion over the land serve this purpose.

The acts of the possessor in marking out the area of land alleged to be possessed will be relevant in defining the extent of the land possessed. However, acts of marking off, fencing or otherwise defining the area occupied will not by themselves constitute possession, for sufficiently concentrated acts of dominion within the enclosed area must be effected.[64] If acts of a sufficiently intense nature are done over almost all of an enclosed parcel of land, then there may be said to be a con-

---

Tarpley, 112 Ind. App. 1, 7, 41 N.E.2d 640, 642 (1942). In *Matanich v. American Oil Co.*, 139 Ind. App. 145, 216 N.E.2d 359 (1966), the court noted that

> [p]roof of possession for more than 20 years of a great bulk of the property under a deed describing the property is enough to show constructive possession of the whole and is adequate to base a title in fee, in the absence of a showing of adverse possession in another for 20 years.

Id. at 151, 216 N.E.2d at 362.

63. Marengo Cave Co. v. Ross, 212 Ind. 624, 10 N.E.2d 917 (1937). This requirement is impliedly retained in full force by 32 IND. CODE art. 1, ch. 20, § 1 (1971).

64. The absence of color of title only affects the extent of possession. The rights of those who enter upon lands without color of title are confined to that portion which is subjected to their actual possession.

Cooper v. Tarpley, 112 Ind. App. 1, 7, 41 N.E.2d 640, 642 (1942). *See* Walsh, *Title by Adverse Possession*, 16 N.Y.U.L.Q. REV. 532, 546 (1939).

structive possession of the remaining portion of the land provided there is sufficient evidence of intention to possess and also color of title on the part of the adverse possessor.[65]

In Indiana, an overriding concern in the consideration of the character of adverse possession is that the person in possession must pay all taxes and assessments on the land before his possession will be considered adverse. The so-called Adverse Possession Act reads, in relevant part:

> Hereafter in any suit to establish title to lands or real estate no possession thereof shall be deemed adverse to the owner in such manner as to establish title or rights in and to such land or real estate unless such adverse possessor or claimant shall have paid and discharged all taxes and special assessments of every nature falling due on such land or real estate during the period he claims to have possessed the same adversely: Provided, however, That nothing in this act shall relieve any adverse possessor or claimant from proving all the elements of title by adverse possession now required by law.[66]

This enactment clearly affects all the other requirements of adverse possession. Since the requirement is that taxes and assessments should be paid by the adverse possessor, there must be a state of mind almost amounting to an assertion of title on the part of the adverse possessor. In view of this, it may well be argued that the period of time limited for adverse possession in Indiana, namely ten years, is too long. It also may be argued that an adverse possessor must have a deliberately acquisitive state of mind if he is to succeed in obtaining the property. However, this is not the complete picture since the tax receipts and certificates contain nothing like an accurate description or plan of the parcel of land on which the taxes and assessments were made. Consequently, the tax records will be of limited utility in some circumstances such as encroachments. As a result, the courts have almost emasculated the requirement that an adverse possessor by encroachment pay taxes on the land so occupied.[67] The practical result of these decisions is that the occupation of land separate from other land that the occupier possesses must be intentional or deliberate, while encroachment may be deliberate, but need be only inadvertent or careless.

---

65. *See* note 48 *supra* and accompanying text.
66. 32 IND. CODE art. 1, ch. 20, § 1 (1971).
67. Matanich v. American Oil Co., 139 Ind. App. 145, 216 N.E.2d 359 (1966).

THE EFFECT OF POSSESSION

The effect of taking possession for the requisite period is twofold. The former owner is prevented from bringing an action to recover possession of the property since the limitation period for such an action has expired. Furthermore, the adverse possessor is entitled, at the termination of the limitation period, to be recognized as the new owner either by a declaratory judgment or decree in quiet title proceedings or otherwise.[68] The type of title obtained by an adverse possessor and the extent to which it is dependent upon the title of the previous owner are questions which are still not entirely settled by the decisions.[69] The general rule is that the adverse possessor obtains an estate qualitatively and quantitatively commensurate with that held by the person against whom the adverse possession was successful. Whether a freehold or a leasehold estate is obtained depends primarily upon what was held by the ousted titleholder. However, this result may be modified by the extent of the occupation of the adverse possessor. Other covenants and restrictions binding the estate acquired by an adverse possessor depend to a large extent upon what bound the estate of the dispossessed owner. Restrictive covenants, easements and other third party rights which run with the land and have not been extinguished either by the adverse possessor or by the acts of others interested prior to his entry will bind the newly acquired estate of the adverse possessor.

The estate obtained will generally be a fee simple, and there is a presumption that it will be.[70] This presumption may be that the adverse possessor claims as large an estate or interest in the land as is possible. However, it is possible for a squatter to occupy against a tenant and to obtain a leasehold estate.[71] Where adverse possession is taken against a leaseholder, it is not settled when the same possession may inure against the landlord.[72] Whether the occupation of the adverse possessor will prevail against both tenant and landlord will depend upon all the circumstances. The limitation period for the landlord's action to regain possession will normally commence on the termination of the original

68. It should be noted that the provisions of the new Indiana Rules of Trial Procedure allow for relief from a judgment which has been obtained against a person suffering from a disability and who was not represented. IND. R. TRIAL P. TR. 60, 63.1(A)(1).

69. An excellent article on this topic is Wylie, *Adverse Possession: An Ailing Concept?*, 16 N. IR. L.Q. 467 (1965). *See also* Ballentine, *Claim of Title in Adverse Possession*, 28 YALE L.J. 219 (1919); Challis, *The Squatter's Case*, 5 L.Q. REV. 185 (1889).

70. Fairweather v. St. Marylebone Property Co. Ltd., [1963] A.C. 510.

71. *Id.*

72. *Id.*

lease.[73] The adverse occupant of leasehold land will nearly always be obliged to pay rent and, according to the basis on which the rent is paid, will become a periodic tenant. If he takes advantage of the previous tenant's lease, he may be estopped from denying that he has adopted it, and will therefore make himself subject to the covenants contained therein.[74]

The adverse possessor will gain the estate only in the land that he has actually occupied; he will not obtain any rights incidental to the land though use of the land is inconvenient or impossible without such rights. Specific rules govern acquisition of incorporeal hereditaments, and such rules must be strictly complied with before any such rights over the land of another will be acquired. This may be so even when it is impossible for the adverse possessor lawfully to reach land recently acquired by him.[75]

In some jurisdictions the position of an innocent third party purchaser is protected.[76] The normal rule is that the estate owner dispossessed for the statutory period can sell no more than he has. Since the successful adverse possessor manages to extinguish the right of the former owner, the latter cannot transfer anything. However, some English, Canadian and Australian jurisdictions protect the bona fide purchaser for value who is without notice of the interest of the possessor. In these jurisdictions, the purchaser obtains a better title to the land than the vendor had, and the adverse possessor's interest is abridged correspondingly.[77] Although this concept is not unfamiliar to commercial lawyers, it is not the usual rule with respect to adverse possession of land. Normally, the notice that would follow a survey and a visual inspection of the premises is attributed to a purchaser. In Indiana, Trial Rule 63.1(A)[78] attempts to reverse this position to protect a purchaser of land who took possession in good faith and without notice. It should be noted that this rule may not have the desired effect, for it is couched in terms of barring the remedy and does not acknowledge the apparent legal position of a successful adverse possessor in Indiana, namely that he becomes fully

73. There is some doubt whether a tenant dispossessed for the limitation period may accelerate the process by surrendering his extinguished lease. *See* Fairweather v. St. Marylebone Property Co. Ltd., [1963] A.C. 510.

74. E.R. Ives v. High, [1967] 2 Q.B. 379.

75. *See* Lewis v. Plunket, [1937] 1 All E.R. 530; Iredale v. Loudon, 40 Can. S. Ct. 313 (1908); Tichborne v. Weir, 8 T.L.R. 735 (1892); Wilkes v. Greenway, 6 T.L.R. 449 (1890).

76. Matanich v. American Oil Co., 139 Ind. App. 145, 216 N.E.2d 359 (1966).

77. *See* Boyczuk v. Perry, [1948] 1 W.W.R. 495; Dobek v. Jennings, [1928] 1 D.L.R. 736.

78. IND. R. TRIAL P. TR. 63.1(A).

entitled to the property.[79] Furthermore, it may not be thought justifiable to deprive an owner of his land in favor of one who did not conduct an adequate inspection and survey. Thus, whether this rule will have its intended effect is still uncertain.

CONCLUSION

Although there are many matters on which there is inadequate authority in this field, it is demonstrable that the general effect of permitting adverse possession to ripen into title is benign. As long as no scheme of registration of title to land is brought into effect, the institution will remain an asset to Indiana society. The policy reasons for the existence of the institution, as set out above, should form the explicit basis for judicial decisions on adverse possession. Had such policy reasons formed the explicit basis for decisions in the past, there probably would have been far fewer cases in which land was occupied by a person who had no possibility of ultimately acquiring the land for himself.

---

79. The rule reads, in relevant part:

> [T]he tolling or extension of the statute of limitations or other bar of a claim to the property shall be ineffective against a purchaser of an interest in land or a purchaser or lien creditor who acquires an interest in personal property and who claims such interest under or because of such judgment, such tolling or such extension if:
>
> (1) The purchaser of land gives value and perfects of record or takes possession of the land in good faith and without notice of the avoidance, tolling or extension while the person against whom he claims is not in possession of the land and before he has filed notice in the lis pendens record of the county where the land is located . . . .

Id.

Valparaiso University Law Review

Volume 6 FALL 1971 Number 1

Published by the Valparaiso University School of Law, Valparaiso, Indiana.