

The legal constructive possession of wild and vacant lands is in the possessor of the legal title.

Gage v. Kaufman, 133 U. S. 471, 33 L. ed. 725, 10 Sup. Ct. Rep. 406; Thompson v. Etowah Iron Co. 91 Ga. 542, 17 S. E. 688; Rogers v. Hoskins, 15 Ga. 276; Simmons Creek Coal Co. v. Doran, 142 U. S. 418-449, 35 L. ed. 1063-1076, 12 Sup. Ct. Rep. 239; Ga. Code 1895, § 3878; Green v. Liter, 8 Cranch, 229, 3 L. ed. 545; Parr v. Gratz, 4 Wheat. 213, 4 L. ed. 553.

Averments and proof of trespass and waste committed by defendants do not constitute such possession in defendants as to prevent the true owner from filing a **bill quia timet**.

Simmons Creek Coal Co. v. Doran, 142 U. S. 418, 35 L. ed. 1063, 12 Sup. Ct. Rep. 239.

Under the peculiar laws in Georgia relative to seven years' possession under color of title, it cannot be questioned that where a party is interfering by continuing trespasses with complainant's title, and doing it under color of a deed by acts which would ripen into prescriptive title unless the deed can be shown by extrinsic evidence to have been obtained by fraud, the fraud not appearing on the face of the deed, such deed does throw a cloud upon the complainant's title.<*pg. 219>

Irrespective of the statutory provision of the Montana Code, the right to maintain an action of this character in order to prevent a multiplicity of suits falls under one of the well-recognized heads of equity jurisprudence, and has been recognized in many mining cases.

Erhardt v. Boaro, 113 U. S. 537, 28 L. ed. 1116, 5 Sup. Ct. Rep. 560; Waterloo Min. Co. v. Doe, 27 C. C. A. 50, 48 U. S. App. 411, 82 Fed. 45.

Statutory enactments to the effect that anyone, whether in actual possession or not, claiming title to real estate, may bring an action against any adverse claimant for the purpose of quieting his title, enlarge, but do not change the character of, the equitable rights of persons claiming title to real property; and a Federal court sitting in such a state, as a court of equity, has jurisdiction to give the relief accorded by the statute.

Holland v. Challen, 110 U. S. 15, 28 L. ed. 52, 3 Sup. Ct. Rep. 495; Reynolds v. First Nat. Bank, 112 U. S. 405, 28 L. ed. 733, 5 Sup. Ct. Rep. 213; Bardon v. Land & River Improv. Co. 157 U. S. 327, 39 L. ed. 719, 15 Sup. Ct. Rep. 650; Clark v. Smith, 13 Pet. 195, 10 L. ed. 123.

The commission of a trespass on real estate, and of acts of waste upon it, do not constitute a possession which in itself would drive the owner to an action of ejectment, and prevent him from filing a **bill quia timet**.

Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 35 L. ed. 1063, 12 Sup. Ct. Rep. 239.

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declared that no person or persons should at any time thereafter make any entry into any lands, tenements, or hereditaments but within twenty years next after his or their right or title shall thereafter have first descended or accrued to the same, and that in default thereof such persons not entering, and their heirs, should be utterly excluded and debarred from such entry thereafter to be made, any former law or statute to the contrary notwithstanding.

Twenty years is, therefore, the period limited for entry upon any lands within this District after the claimant's title has accrued. After the lapse of that period there is no right of entry upon lands against the party in possession, and all actions to enforce any such alleged right are barred. Complete possession, the character of which is hereafter stated, of real property in the District for that period, with a claim of ownership, operates therefore to give the occupant title to the premises. No one else, with certain exceptions-as infants, married women, lunatics, and persons imprisoned or beyond the seas, who may bring their action within ten years after the expiration of their disability-can call his title in question. He can stand on his adverse possession as fully as if he had always held the undisputed title of record.<*pg. 535>

The decisions of the courts have determined the character of the possession which will thus bar the right of the former owner to recover real property. It must be an open, visible, continuous and exclusive possession, with a claim of ownership, such as will notify parties seeking information upon the subject that the premises are not held in subordination to any title or claim of others, but adversely to all titles and all claimants. In the present cases the adverse possession of the grantors of the complainants sufficient to bar the right of previous owners, is abundantly established within the most strict definition of that term.

The objection of the defendants to the jurisdiction of a court of equity in this case arises from confounding it with a bill of peace and an ordinary **bill quia timet**, to neither of which class does it belong, nor is it governed by the same principles. Bills of peace are of

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The difference between this case and an ordinary bill quia timet is equally marked. A bill quia timet is generally brought to prevent future litigation as to property by removing existing causes of controversy as to its title. There is no controversy here as to the title of the complainants. The adverse possession of the parties, through whom they claim, was complete, within the most exacting judicial definition of the term. It is now well settled that by adverse possession for the period designated by the statute,

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It was urged that the title of the plaintiff to the property had not been by prior proceedings judicially adjudged to be valid, and that he was not in possession of the property, the contention of the defendant being that, when either of these conditions existed, a court of equity would not interpose its authority to remove a cloud upon the title of the plaintiff and determine his right to the possession of the property. The court replied that "the Statute of Nebraska enlarges the class of cases in which relief was formerly afforded by a court of equity in quieting the title to real property. It authorizes the institution of legal proceedings not merely in cases where a bill of peace would lie, that is, to establish the title of the plaintiff against numerous parties insisting upon the same right, or to obtain repose against repeated litigation of an unsuccessful claim by the same party, but also to prevent future litigation respecting the property by removing existing causes of controversy as to its title, and so embraces cases where a bill quia timet to remove a cloud upon the title would lie."

The court then explained that a bill of peace would lie only where the plaintiff was in possession and his right had been successfully maintained, and that the equity of the plaintiff in such cases arose from the protracted litigation for the possession of the property which the action of ejectment at common law permitted; and that to entitle

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Where such instrument may be made good by extrinsic evidence, or where it appears good upon its face, and can be made to appear void by extrinsic evidence, a bill to remove the cloud and quiet title, in the nature of a **bill quia timet**, will lie.

Reynolds v. Crawfordsville First Nat. Bank, 112 U. S. 410, 411 (28: 736).

The averments of the bill were sufficient.

Morgan v. Smith, 11 Ill. 200, 201; Henry County v. Winnebago Drainage Co. 52 Ill. 302; Cooper, Eq. Pl. 6; Story, Eq. Pl. § 255.

The United States Courts in equity will follow a law of the State, extending equitable remedies as regards titles to real estate.

Clark v. Smith, 13 Pet., 203; Wickliffe v. Owings, 17 How., 47 (58 U. S., XV., 44); Stark v. Starr, 6 Wall., 409 (73 U. S., XVIII., 926); Starr v. Stark, 1 Sawy., 270; Parrish v. Ferris, 2 Black, 607 (67 U. S., XVII., 318).

Messrs. *T. M. Marquett* and G. W. Doane, for appellee:

The tax title held by the complainant and the only title which he holds is, at best a very doubtful title, and the principle applied by courts of equity is that where complainant has himself a doubtful title, he cannot have the relief sought in a bill quia timet.

West v. Schnebly, 54 Ill., 523; Huntington v. Allen, 44 Miss., 654; Low v. Staples, 2 Nev., 209.

The title of complainant is not only doubtful, but absolutely void. "A tax deed based upon a sale for a portion only of the taxes due upon land being unauthorized, is ineffectual to convey title."

State v. Helmer, 10 Neb., 25; Tillotson v. Small, 13 Neb., 202; O'Donohue v. Hendrix, 13 Neb., 257.

The bill sets forth the tax deeds held by the complainant, the adverse fee simple title claimed by the defendant, that complainant is entitled to possession and that defendant is trying to obtain, take and keep possession thereof and denying the right of possession of complainant.

In equity, the property of the corporation is regarded as held in transfer for the payment of its debts. And it is also held, that stockholders are not entitled to any part of the capital stock or dividend of the profits, until all the debts are paid. And the rights of the creditors are recognized to pursue corporate property into whose possession soever it may have passed, unless transferred to a bona fide purchaser; even assets derived from the sale of corporate property will be regarded as substitutes from the things sold. 1 Potter, Corp., 389, sec. 308.

It is evident that the law under discussion is based upon this principle. It is the nature of a law allowing a **bill quia timet**; or of a statute authorizing interposition to preserve rights seen to be endangered by a course adopted and pursued by a debtor. It is the mere accident of the present case that the sovereign which creates the law is also the creditor to be protected. This does not affect the merits of the question. The interest to be subserved is the same in this as in the other cases, viz.: that of the public.

Therefore, as a matter of general legislation, this Act of May 7, 1878, might have been passed, even if the power of Congress were as restricted by existing obligation as is that of a State Legislature; or if the Acts of 1862 and of 1864 contained no reservation of the right to amend or repeal them.

II. Congress is not expressly debarred by the Constitution from passing a law which may incidentally impair or affect the obligation of a contract in some of its provisions. The prohibition is against any State doing this. Expressio unius, etc., may, perhaps, apply here. In the clause referred to (art. 1, sec. 10), it is noticeable that everything forbidden to the State is something which is competent to the United States, except the passage of attainder and ex post facto laws and the grant of a title of nobility; and this last excepted power is explicitly denied the Federal Government in the next preceding section of the Constitution, and that of passing bills of attainder and retroactive laws by another sentence of that section.

This is a prohibitory writ to restrain a party from doing a wrong or injury to the rights of another. It is a beneficial process for the protection of rights, and is favorably viewed by courts of chancery, as its object is to prevent rather than redress injuries; and has latterly been more liberally awarded than formerly, 7 Ves., Jun. 307.

The bill contains charges of numerous trespasses by entering upon the lands of the complainants and doing acts greatly to their injury and prejudice, and to the disturbance of the quiet enjoyment of their land, and threatening a total destruction of all their rights. And although it is not according to the course of chancery to grant injunctions to prevent trespasses when there is a clear and adequate remedy at law, yet it will be done when the case is special and peculiar, and when no adequate remedy can be had at law, and particularly when the injury threatens irreparable ruin, 6 Ves. 147; 7 Eden, 307. Every man is entitled to be protected in the possession and enjoyment of his property; and the ordinary remedy by action of trespass may generally be sufficient to afford such protection. But, where from the peculiar nature and circumstances of the case, this is not an adequate protection, it is a fit case to interpose the preventive process of injunction. This is the principle running through all the cases on this subject, and is founded upon the most wise and just considerations; and this is peculiarly such a case. The complaint is not of a mere private trespass, admitting of compensation in damages; but of injuries which go to the total destruction of the whole rights of the complainants. The mischief threatened is great and irreparable. 7 Johns. Ch. 330. It is one of the most beneficial powers of a court of equity to interpose and prevent an injury before any has actually been suffered; and this is done by a bill which is sometimes called a bill quia timet. Mitford, 120.

The doctrine of this court in the case of *Osborn v. The United States Bank*, 9 Wheat. 738, fully sustains the present application for an injunction. The bill in that case was filed to obtain an injunction against the auditor of the State of Ohio to restrain him from executing a law of that State, which was alleged to be to the great injury of the bank, and to the destruction of rights conferred by their charter. The only