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EJECTMENT—EQUITABLE TITLE IN KENTUCKY

The action of ejectment is a possessory action, and to maintain this action the plaintiff must in most cases have a right to the land in question. The exception to this is that in case of an intruder, mere prior possession will be sufficient to maintain the action.

The question is here raised as to whether in Kentucky title must be a legal title or whether the action can be maintained by a plaintiff who has only an equitable title. Legal title is used herein not in the sense of a fee simple title or record title, but rather as opposed to equitable title. This question will be discussed in the light of the Kentucky decisions and of a few of the leading decisions of our sister states, so as to determine which is the better rule for our courts to adopt.

The weight of authority is that the plaintiff must have legal title in order to prevail in an action of ejectment, since ejectment is a legal action. Where plaintiffs are devisees under a will and are holding the land as remaindermen, to prevail against the defendant who was life tenant under the testator, they must show legal title in themselves to maintain an action of ejectment. Where a person of unsound mind conveyed land for a valuable consideration, it was held that the right of entry by the heir was legal and perfect without any restitution of the consideration paid the ancestor.

An early decision in Kentucky held that it is a well settled principle that the legal title must prevail in ejectment, “A mere equity, however clear and incontestable it may be, will neither authorize a recovery on the part of the plaintiff, nor will it be sufficient to maintain the defendant in possession against the legal title.”

Equitable title is a right possessed by a person to have the legal title to property transferred to him, or the right to the beneficial use of the property.

2 Farrington v. Greer, 94 Fla. 457, 113 So. 722 (1927).
3 Phelps v. City of Chicago, 331 Ill. 80, 162 N. E. 119 (1928); Northcutt v. Bates, 9 Ky. Opin. 423 (1876); Acoff v. Roman, 172 Miss. 141, 159 So. 555 (1935); Mailloux v. Jordan, 50 R. I. 183, 146 Atl. 480 (1929).
4 Stanley v. Griffith, 225 Ky. 36, 7 S. W. (2d) 517 (1928).
7 Harris v. Mason, 120 Tenn. 668, 115 S. W. 1164 (1909).
interest in property, the title to which is vested in another. Certainly in the light of justice and good conscience one holding equitable title should be allowed to maintain an action of ejectment. An early case indicated that relief should be given by a court of equity to a devisee holding under an equitable title in an action for the recovery of real property.

This does not include cases of contracts for the sale of land where equity is said to treat the vendee as having the equitable title, although none or only a part of the purchase price has been paid. In such cases the vendee does not have the beneficial interest and so cannot be said, realistically speaking, to have equitable title.

The Civil Code of Kentucky provides that an action shall be maintained in the name of the real party in interest. From the standpoint of this code section a person holding only an equitable title should be able to maintain an action of ejectment. It can be said that an equitable title holder is directly interested in the subject matter of the suit, and is the real party in interest. It seems that the Kentucky courts have failed to consider this code section as affecting the question, but such consideration might well lead to a contrary result. Apparently the courts of two of our sister states have felt strongly that the better rule is to allow the plaintiff who holds an equitable title to sue, and code provisions in these states have given him this right.

Georgia, in a recent case, held that a purchaser of land who pays the entire purchase price and enters into actual possession thereby acquires a perfect equity which is equivalent to a legal title and that on the strength thereof he, or one who stands in his shoes, can maintain an action of ejectment. This rule has been followed with good results in Oklahoma and Pennsylvania.

Our Kentucky court has allowed equitable estoppel as a defense in an action at law where title or interest in land is involved, but it refused to allow the plaintiff holding an equitable title to maintain an action. There seems to me no good reason for this distinction. If it is just and equitable to allow the defendant to use his equitable title as a defense it does not seem that it would be unjust and inequitable to allow the plaintiff that same right.

8 Beringer v. Lutz, 188 Pa. 364, 41 Atl. 643 (1898).
10 Kentucky Code (Carroll, 1938) Sec. 18.
11 Taylor v. Danley, 83 Kan. 646, 112 Pac. 595 (1911); Walker v. Miller, 139 N. C. 448, 52 S. E. 125 (1905).
12 Strickland v. Jenkins, Ga., 31 S. E. (2d) 18 (1944).
In the light of our own code section, providing that the real party in interest shall bring an action in his name, and in the light of the results achieved in our sister states by code provisions and court decisions, and in view of the apparently unfair distinction which is made in Kentucky between the plaintiff and the defendant who has equitable title, it is believed that our Kentucky Court should adopt the rule which allows a person having an equitable title to maintain an action in ejectment.

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