

GRISWOLD v. BRAGG *et ux.*

(Circuit Court, D. Connecticut. May 27, 1880.)

1. **CONSTITUTIONAL LAW—OBLIGATION OF CONTRACTS—EJECTMENT—"BETTERMENT ACT."**
Rev. St. Conn. p. 382, § 17, providing that final judgment shall not be rendered against a defendant in ejectment until the court shall have ascertained the present value of improvements made in good faith, and the amount reasonably due for use and occupation, and until plaintiff shall have paid defendant any excess of the former sum over the latter, does not impair the effect of the conveyances under which plaintiff holds, so as to violate Const. U. S. art. 1, § 10, forbidding the states to pass laws impairing the obligation of contracts.
2. **SAME—DUE PROCESS OF LAW.**
The statute is not in contravention of the inhibition of the constitution of Connecticut against depriving a person of his property without due course of law.
3. **SAME—TRIAL BY JURY—ASCERTAINING VALUE OF IMPROVEMENTS.**
The fact that the value of the improvements, and of the use and occupation, are to be determined by the court upon equitable principles, does not deprive the plaintiff of a right to trial by jury, in contravention of the inhibition in the state constitution.

In Equity. Bill supplementary to an action in ejectment, for the purpose of ascertaining the value of betterments and improvements. On demurrer to bill.

W. F. Wilcox and *Richard D. Hubbard*, for plaintiff.
Simeon E. Baldwin, for defendants.

SHIPMAN, J. At the September term, 1879, of this court, the jury rendered a verdict, in an action of ejectment, in favor of the present defendants against the present plaintiff, that they recover the seisin and possession of an undivided fourth part of a tract of land in the town of Chester. Upon motion of the defendant in the ejectment suit, judgment and execution were stayed until further order. He thereupon filed a supplemental bill on the equity side of the court. This bill, after setting out the state statute hereinafter recited, commonly called the "Betterment Act," alleges, in substance, that the plaintiff and those under whom he claims have held said land by a series of connected conveyances since 1846, which deeds purported to convey, and were intended and believed to convey, an absolute estate in fee-simple, and that the plaintiff and his grantors have had uninterrupted possession of said land since 1846, under a like belief that they had an absolute estate; and that during this time, and before the commencement of the ejectment suit, improvements of the value of \$10,000 have been made on said land, by said reputed owners, in good faith, and in the like belief; and prays that the present value of said improvements, and the excess of the value thereof over the amount due to the defendants for the use and occupation of said premises, may be ascertained, to the end that the equitable relief provided by said statute may be granted. To this bill the defendants have demurred. Their title became vested in them in 1878.

The statute (Revision 1875, p. 362, § 17) provides as follows:

"Final judgment shall not be rendered against any defendant, in an action of ejectment, who or whose grantors or ancestors have, in good faith, believ-

ing that he or they, as the case may be, had an absolute title to the land in question, made improvements thereon, before the commencement of the action, until the court shall have ascertained the present value thereof, and the amount reasonably due to the plaintiff from the defendant for the use and occupation of the premises; and, if such value of such improvements exceeds such amount due for use and occupation, final judgment shall not be rendered until the plaintiff has paid said balance to the defendant; but, if the plaintiff shall elect to have the title confirmed in the defendant, and shall, upon the rendition of the verdict, file notice of such election with the clerk of the court, the court shall ascertain what sum ought, in equity, to be paid to the plaintiff by the defendant, or other parties in interest; and, on payment thereof, may confirm the title to said land in the parties paying it."

The original statute was passed June 26, 1848, (Laws Conn. 1848, p. 48.) It plainly appears from the act as passed, and as reproduced in the Revisions of 1849 (section 223) and 1866, (section 281,) that the proceeding in the state court, upon the motion of the defendant, after the verdict, is a proceeding in equity.

The question of law which is raised by the demurrer is in regard to the validity of this statute. It is not denied that the statutes of the several states in regard to realty, except when the constitution, treaties, or statutes of the United States otherwise require or provide, which are in conformity with the constitutions of the respective states, are rules of property, and rules of decision in the courts of the United States, (*Bank v. Dudley's Lessee*, 2 Pet. 492;) and that, if a state legislature has created a right and established a remedy in chancery to enforce such right, such remedy may be pursued in the federal courts, if it is not inconsistent with their constitution, (*Clark v. Smith*, 13 Pet. 195; *Ex parte Biddle*, 2 Mason, 472;) and that an inability of the federal courts to proceed in the exact mode provided by a state statute need not prevent a party from the benefit of the relief which is intended to be granted, if the modes of proceeding in courts of chancery are adapted to carry into effect the statute. (*Bank v. Dudley's Lessee*, cited *supra*.) This is true, although the right which has been established by the local statute is a new right, and one previously unknown to a court of chancery in this country or in England. *Lorman v. Clarke*, 2 McLean, 568; *Bayerque v. Cohen*, 1 McAll. 113. The practice in equity is, in general, except where otherwise directed by statute or by the rules of the supreme court, regulated by the English chancery practice as it existed in 1842, before the adoption of the "new rules." Equity Rule 90; *Badger v. Badger*, 1 Cliff. 237; *Good-year v. Rubber Co.*, 2 Cliff. 351.

The statute practically impresses upon the land of a successful plaintiff in ejectment a lien for the excess, above the amount due for use and occupation, of the present value of the improvements which have been placed on the land, before the commencement of the action, by a defendant or his ancestors or grantors, in good faith, and in the belief that he or they had an absolute title to the land in question, and forbids occupancy by the plaintiff until the lien is paid. There is a natural equity which rebels at the idea that a *bona fide* occupant and reputed owner of land in a newly-settled country, where unimproved land is of small value,

or where skill in conveyancing has not been attained, or where surveys have been uncertain or inaccurate, should lose the benefit of the labor and money which he had expended in the erroneous belief that his title was absolute and perfect. While it is true that improvements and permanent buildings upon land belong to the owner, yet, in a comparatively newly-organized state, where titles are necessarily more uncertain than they are in England, there is an instinctive conviction that justice requires that the possessor under a defective title should have recompense for the improvements which have been made in good faith upon the land of another. The maxim, often repeated in the decisions upon this subject, *nemo debet locupletari ex alterius incommodo*, tersely expresses the antagonism against the enrichment of one out of the honest mistake, and to the ruin, of another. It is obvious that this statutory equity is not without occasional hardships. The true owner may be forced to sell his land against his will, and may sometimes be placed too much in the power of capital, but a carefully regulated and guarded statute should ordinarily be the means of doing exact justice to the owner.

It is well known that the English law made no provision for reimbursement of expenditures of this kind, as against the owner of the legal title, except by allowing the *bona fide* occupant to recoup the value of his improvements, when he is a defendant in a bill in equity praying for an account of rents and profits. The established theory was that a court of equity should not go any further, and "grant active relief in favor of such a *bona fide* possessor making permanent meliorations and improvements, by sustaining a bill, brought by him therefor, against the true owner, after he has recovered the premises at law." *Bright v. Boyd*, 1 Story, 478, 495. Such was the opinion of Chancellor WALWORTH in *Putnam v. Ritchie*, 6 Paige, 390, and such may be taken to be the state of law in this country, in 1841, apart from local statutes, and of the English law then and now. In 1841 Judge STORY decided, in *Bright v. Boyd*, in favor of the power of courts of equity to grant affirmative relief, at the suit of a *bona fide* possessor, against the true owner; and in 1843 restated his opinion, after an additional hearing of the same case. 2 Story, 605. The learned judge thus states his view of the law:

"I wish, in coming to this conclusion, to be distinctly understood as affirming and maintaining the broad doctrine, as a doctrine of equity, that, so far as an innocent purchaser for a valuable consideration, without notice of any infirmity in his title, has, by his improvements and meliorations, added to the permanent value of the estate, he is entitled to a full remuneration; and that such increase of value is a lien and charge on the estate, which the absolute owner is bound to discharge, before he is to be restored to his original rights in the land. This is the clear result of the Roman law; and it has the most persuasive equity, and, I may add, common sense and common justice, for its foundation."

This opinion of Judge STORY, though often favorably quoted, cannot be considered as the established law of this country, apart from the statute, because it has rarely had occasion to be reviewed, inasmuch as the "Betterment Acts" have become the predominant statutory system of the country. The supreme courts of Missouri, Maryland and Oregon—

states which apparently have no statute on the subject—have adopted his views. *Valle's Heirs v. Fleming's Heirs*, (1859,) 29 Mo. 152; *Union Hall Ass'n v. Morrison*, (1873,) 39 Md. 281; *Hatcher v. Briggs*, (1876,) 6 Or. 31.

The theory of the Connecticut statute is that of Judge STORY, that an equitable lien is placed upon the land for the value of the improvements which the *bona fide* occupant has innocently made. Furthermore, the legal owner has his election either to take possession of the land by paying the lien, or to receive, in lieu of the land, the sum which the court shall ascertain to be equitably due him. The owner's title is not forced away from him, but the equitable lien of the occupant is preserved. There is no election on the part of the occupant to keep the land, and thus compel the owner to abandon his title. Neither is any judgment rendered against the owner for the value of the improvements, to be enforced by levy of execution. These two provisions in the statutes of Ohio and Iowa, respectively, were held to be unconstitutional upon the ground that they invaded the rights of private property as secured by the constitutions of the respective states. *McCoy v. Grandy*, 3 Ohio St. 463; *Childs v. Shower*, 18 Iowa, 261. It may be remarked that the original statute of 1848 provided that "the court shall order and decree the balance so found due to be paid." This clause is not found in the present statute, and the amount of the lien cannot, apparently, be collected by levy upon the defendant's property.

The statute is said to be unconstitutional, in that it impairs the effect of conveyances, in violation of the provision of the constitution of the United States, (article 1, § 10,) which prohibits a state from passing a law impairing the obligation of contracts; and that, as regards pre-existing conveyances or estates, it is contrary to the state constitution, because it deprives a person of his property without due course of law, and deprives him of his right of trial by jury. I do not think that it is necessary to enter into a critical examination of these constitutional provisions. The defendants' suggestions are founded upon a harsh view of the nature of the statute. It does not impair the obligation of any contract between the owner and his grantor, or between the state and the owner. It interferes with no legal title. It interferes with, and is an abridgment of, the right to the immediate possession and beneficial enjoyment of property, as that right existed at common law, and, to that extent, impairs the interest which owners formerly had in lands. It cannot be said to be an unjust or unreasonable limitation of the common-law right of possession, but, on the contrary, the provisions are reasonable. *Society v. Wheeler*, 2 Gall. 105; *Jackson v. Lamphire*, 3 Pet. 280; *Curtis v. Whitney*, 13 Wall. 68; *Welch v. Wadsworth*, 30 Conn. 149.

Discussion upon the constitutionality of this statute has not, apparently, arisen in the courts of this state. An examination of decisions elsewhere upon statutes of this class shows that *Green v. Biddle*, 8 Wheat. 1, decided that the betterment act of Kentucky was unconstitutional, because it was a violation of the compact between Virginia and Ken-

tucky. It may fairly be inferred, from the express views of the court, as given by Judges STORY and WASHINGTON, that it disliked the statute irrespective of the contract, and was not satisfied with its provisions. These *dicta* may properly be read in the light of the decision in *Bank v. Dudley's Lessee*, 2 Pet. 492, in which case no opinion was expressed upon the general principles of the betterment act of Ohio. The constitutionality, with relation to the constitutions of the respective states whose courts gave the decisions, or the justice of statutes similar in substance or in principle to the Connecticut statute, has been learnedly discussed and sustained in the following, among other, cases: *Withington v. Corey*, 2 N. H. 115; *Whitney v. Richardson*, 31 Vt. 300; *Armstrong v. Jackson*, 1 Blackf. 874; *McCoy v. Grandy*, 3 Ohio St. 463; *Ross v. Irving*, 14 Ill. 171; *Childs v. Shower*, 18 Iowa, 261. The constitutionality of the Tennessee statute was condemned in *Nelson v. Allen*, 1 Yerg. 376. Judge CATRON says that the question of constitutionality did not properly arise in that case, and expresses no opinion upon the point. The demurrer is overruled.

NATIONAL WATER-WORKS CO. v. SCHOOL-DISTRICT NO. 7.

(Circuit Court, W. D. Missouri, W. D. May, 1882.)

1. SCHOOL BUILDINGS—CITY SCHOOLS—INCORPORATION OF DISTRICT—CONSTRUCTION OF CONTRACT.

Act Mo. 1877, provides that "any city, town, or village, the plat of which has been filed in the recorder's office of the county in which the same is situate, may, together with the territory which is or may be attached thereto, be organized in a single school-district, and when so organized shall be a body politic." *Held* that, when schools formerly under control of a city are organized under this law, the property in the school buildings does not cease to be in the city, and hence a water-works company, which contracts to furnish water free of charge for "all public buildings and offices of the city," is bound to supply the school buildings; especially so when the contract was made before the schools were so organized.

2. MUNICIPAL CORPORATIONS—CONTRACTS—CONSTRUCTION.

The rule that a court, in construing a doubtful provision of a contract, will follow the interpretation placed upon it by the parties, does not apply to contracts made by a municipal corporation in matters affecting the public interest.

At Law. Action by the National Water-Works Company against School-District No. 7 of Kansas City, to recover compensation for water used in the school buildings. On motion to set aside a nonsuit. Motion denied.

KREKEL, J. The controversy in this case between the water-works company and the school board of Kansas City has its origin in the construction of an ordinance under which the water-works of the city were built, incidentally requiring the ascertainment of the object and policy of that portion of the school laws of Missouri under which public schools in cities, towns, and villages are organized. It appears that in 1873 the city of Kansas entered into a contract with the National Water-