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Quitclaim Holder as a Bona Fide Purchaser

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This proposition immediately poses many problems beyond the scope of this article, but it is apparently the best solution to date of conserving present oil and gas resources.

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QUITCLAIM HOLDER AS A BONA FIDE PURCHASER

On the question whether one claiming under a quitclaim is entitled to the protection of the recording acts there is a wide range of authority. Text writers have divided the authorities into so-called majority and minority rules, with the majority giving the quitclaim grantee the protection of the recording acts.[1] Also the majority view is gaining favor constantly, the minority rule denying such protection being an outdated viewpiont.[2] However, beneath the facade of majority and minority labels, there appears to be a large number of subsidiary rules, with no such clear-cut differences as would seem indicated. This article will attempt to point out the barely discernible basic reasoning behind the welter of conflicting rules.

A theory which can be disposed of initially is one finding that presence or lack of warranties in a deed has bearing upon the problem, whether we shall recognize the good faith of a quitclaim holder by granting him protection against outstanding unrecorded interests. The difference in warranties is, of course, a basic distinction between quitclaim and warranty deeds, so it seems that many courts feel constrained to mention it, either to point out that lack of warranties indicates outstanding claims, or to minimize their importance in that connection. Indeed, some courts have been so worried about the warranty argument that an ingenious one has been thought up in rebuttal, to the effect that a purchaser requiring warranties for his protection must have a greater doubt as to the validity of his grantor's title.[3] In practice, however, even those courts which deny protection to a quitclaim holder will give protection to a holder of a deed of bargain and sale without warranties.[4] Therefore, as the warranty argument, though often mentioned, is never relied upon as the true basis for the distinctions made between quitclaims and other deeds, its elimination in the following discussion should not be too great a loss.

The real basis for the distinction made by the minority is the well-settled concept that a quitclaim deed purports to convey only such right, title or interest as the grantor has at the time the deed is made.[5] The

1. 55 Am. Jur. 1112.
2. Compare note, 105 Am. St. Rep. 854 (1903), and annotation, 59 A.L.R. 632 (1927).
3. Babcock v. Wells, 25 R.I. 23, 54 A. 596, 105 Am. St. Rep. 848 (1903).
4. Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304 (1887); American Mortg. Co. v. Hutchinson, 19 Ore. 334, 24 Pac. 515 (1890); Smith v. Branch Bank, 21 Ala. 125 (1852); Pierson v. Bill, 138 Fla. 104, 189 So. 679 (1939); Southern Ry. v. Carroll, 86 S. C. 56, 67 S.E. 4, 138 A.S.R. 1017 (1910).
5. 16 Am. Jur. 624; 8 Thompson, Real Property, sec. 4301 (perm. ed. 1940).

controlling consideration is whether the rule is to be taken literally or as a general truth only.[6] The minority, in the days when they were the majority, could find no logical loophole in this statement, and thus were forced to go along with its reasoning.[7] For how could a grantee, who presumably knew he was buying only what his grantor had, contend that he should prevail over a prior grantee? Some found it possible to reach a different result by a construction of a statute, which Wyoming has,[8] allowing a grantor to pass by quitclaim all the estate which he could lawfully convey by deed of bargain and sale,[9] though this construction was certainly not unanimous.[10]

The deadlock was broken by the Supreme Court of the United States in its decision in the case of *Moelle v. Sherwood*,[11] overruling its former decisions denying protection to quitclaim holders. The new rule laid down provided that a quitclaim holder could be a bona fide purchaser for the purposes of the recording acts; in other words, that the form of the deed was not conclusive as to this question, which would be decided on other considerations. With such good authority to rely upon, many states have now rejected the contention that a party taking a quitclaim deed cannot be a bona fide purchaser,[12] and some have overruled former holdings to the contrary.[13]

This view, which is now that of the great majority, has often been called the better reasoned rule, and some courts have quoted the *Moelle* decision at length.[14] Actually, those quoted portions[15] merely point out that there may be many commendable reasons why a grantor may refuse to give warranties when he really does have title. Just why a deed of bargain and sale without warranties could not be given under such conditions was not a point which the court considered. The weaknesses of the warranty argument on either side of the issue have been pointed out above, so why this is the better reasoned rule is a matter of conjecture.

However, few can argue with the result reached by this rule, except

6. Schott v. Dosh, 49 Neb. 187, 68 N.W. 346, 59 Am. St. Rep. 531 (1896).
7. Baker v. Humphrey, 101 U.S. 494, 25 L. Ed. 1065 (1879); May v. LeClaire, 11 Wall. 232, 20 L. Ed. 50 (1871); Harrison v. Boring, 44 Tex. 255 (1875); Walker v. Miller, 11 Ala. 1067 (1847); Leland v. Isenbeck, 1 Idaho 469 (1873); McAdow v. Black, 6 Mont. 601, 13 Pac. 377 (1887); Fowler v. Will, 19 S. D. 131, 102 N.W. 598 (1905); Bragg v. Paulk, 42 Mo. 502 (1865).
8. Wyo. Comp. Stat. 1945 sec. 66-103.
9. Smith v. McClain, 146 Ind. 77, 45 N.E. 41 (1896); Mansfield v. Dyer, 131 Mass. 200 (1881).
10. Olmsted v. McCrory, 158 Wis. 323, 148 N.W. 871 (1914); Martin v. Brown, 4 Minn. 201 (1860); Marshall v. Roberts, 18 Minn. 365 (1871); Baker v. Woodward, 12 Ore. 3 (1884); See 28 Ore. L. Rev. 258 (1949) for discussion of the words "lawfully convey" in the statute.
11. 148 U.S. 21, 13 S.Ct. 426, 37 L. Ed. 350 (1892).
12. See cases cited in Phoenix Title and Trust Co. v. Old Dominion Co., 31 Ariz. 324, 253 Pac. 435, 59 A.L.R. 625, 630 (1927).
13. Aitken v. Lane, 108 Mont. 382, 92 P.2d 628 (1939); Shute v. Tidrick, 26 S.D. 505, 128 N.W. 811 (1910).
14. Phoenix Title and Trust Co. v. Old Dominion Co., 31 Ariz. 324, 253 Pac. 435, 59 A.L.R. 625 (1927); Aitken v. Lane, 108 Mont. 382, 92 P.2d 628 (1939).
15. 148 U.S. 21, 13 S.Ct. 426, 37 L. Ed. 350 (1892).

on exceedingly technical grounds. A grantor who has previously conveyed his interest has no more right to convey by deed of bargain and sale than by quitclaim, and but for the recording acts nothing would pass under either type of deed. The recording acts do not of themselves exclude quitclaim deeds from their protection,[16] the rule stating that the quitclaim passes only the grantor's right, title or interest was laid down for different purposes,[17] and even the minority will not generally deny protection to any but the immediate grantee.[18] It seems only justice that a quitclaim grantee who actually acted in good faith should be given the protection afforded other innocent purchasers.

At any rate, it is pretty well settled that a quitclaim holder *may* be a bona fide purchaser under the recording acts, but requirements vary as to what he must do to prove his good faith. As was stated in *Moelle v. Sherwood,*[19] "Whether the grantee is to be treated as taking a mere speculative chance in the property, or a clear title, must depend upon the character of the title of the grantor when he made the conveyance, and the opportunities afforded the grantee of ascertaining this fact and the diligence with which he has prosecuted them, will, besides the payment of a reasonable consideration, determine the bona fide nature of the transaction on his part." Thus the leading case, while implying larger requirements for a quitclaim holder than other grantees, left unsettled just what these requirements should consist of. The one most generally accepted today is the requirement of reasonable or valuable consideration as distinguished from good or nominal consideration.[20]

A problem upon which there is a wider range of opinion is the one concerning just what diligence should be required of the quitclaim grantee. The feeling persists in some jurisdictions that the grantor would not have given a quitclam if he had not had some doubts concerning his title.[21] That the grantee should cross-examine his grantor has been expressly disclaimed,[22] but almost any other requirement seems possible.[23] In Kansas he is required to examine *all* the public records to find anyone ostensibly interested in the property, such as finding who paid the taxes;[24] and must

16. The Wyoming statutes are Wyo. Comp. Stat. 1945 secs. 66-119, 66-123, 66-124.
17. Wilhelm v. Wilken, 149 N.Y. 447, 44 N.E. 82, 52 Am. St. Rep. 743, 32 L.R.A. 370 (1896).
18. Gordon v. Ward, Ala., 128 So. 217 (1930); Rabinowitz v. Keefer, 100 Fla. 741, 132 So. 297 (1931); Hannon v. Seidentopt, 113 Iowa 659, 86 N.W. 44 (1901). Contra: Houston Oil Co. v. Niles, Tex. Comm. App., 255 S.W. 604 (1923).
19. 148 U.S. 21, 13 S.Ct. 426, 37 L. Ed. 350 (1892).
20. Strong v. Wlybark, 204 Mo. 341, 102 S.W. 968, 12 L.R.A. (NS) 240, 120 Am. St. Rep. 710 (1907); House v. Ponce, 13 Cal. App. 279, 109 Pac. 161 (1910); Western Grocer v. Alleman, 81 Kan. 543, 106 Pac. 460, 27 L.R.A. (NS) 620, 135 Am. St. Rep. 398 (1910); Wisconsin River Land Co. v. Selover, 135 Wis. 594, 116 N.W. 265, 16 L.R.A. (NS) 1023 (1908).
21. Knox v. Doty, 81 Kan. 138, 105 Pac. 437, 135 Am. St. Rep. 351 (1909).
22. Eger v. Brown, 77 Kan. 510, 94 Pac. 803, 15 L.R.A. (NS) 459 (1908).
23. Johnson v. Williams, 37 Kan. 179, 14 Pac. 537, 1 Am. St. Rep. 243 (1887); Hope v. Blair, 105 Mo. 85, 16 S.W. 595, 24 Am. St. Rep. 366 (1891); Babcock v. Wells, 25 R.I. 23, 54 A. 596, 105 Am. St. Rep. 848 (1903).
24. Lasley v. Stout, 90 Kan. 712, 136 Pac. 249 (1913).

"direct his attention outward and elsewhere for facts and for dues in derogation of the apparent title."[25] One state, at least, requires no more diligence of the quitclaim grantee than a grantee of a warranty deed.[26] At any rate, the problem is not very well settled, and headnotes on the cases can be very misleading.

Another confusing problem arises from the distinction made by some courts in giving protection against unrecorded conveyances, but denying protection against outstanding equities not entitled to recording.[27] Such equities were not cut off by a quitclaim before the recording acts came into being, and as the majority rule is based upon the theory of the recording acts, ostensibly at least, that rule is considered inapplicable to equities not entitled to recording.[28] The lack of warranties has also been mentioned as a valid argument in this connection, yet a deed of bargain and sale is given protection against such outstanding equities.[29] Other courts fail to see any distinction between being a bona fide purchaser under the recording acts and being such a bona fide purchaser that will cut off outstanding equities.[30]

Thus, a maze of varying rules has grown up about this apparently simple subject. But let us go on to the investigation of some even more obscure rules, for they shed a great deal of light upon the subject. A closer look at the subject reveals a tendency of the courts of both majority rule and minority rule perusasion to limit the effect of those rules when they seem too harsh or too easy. We find them distinguishing between two types of quitclaim deeds, or exhibiting an amazing facility to consture what appears to be a quitclaim into a deed of bargain and sale. In Texas, for example, which follows the minority rule, the deed is usually held to be one of bargain and sale, though nominally a quitclaim, if it discloses an intention to sell and purchase the land, as distinguished from the sale of a mere claim of title.[31] If such an intention is disclosed by adequacy of consideration and other evidences of good faith, the purchaser will be given protection, although the rule denying such protection is given life service.[32] And several courts which follow the majority rule will deny the holder protection if an intention to convey only the grantor's interest is disclosed by inadequacy of consideration and like circumstances.[33] This reasoning is particularly applicable to the situation in which the deed

25. Eger v. Brown, note 22 *supra*.
26. Phoenix Title and Trust Co. v. Old Dominion Co., 31 Ariz. 324, 253 Pac. 435, 59 A.L.R. 625 (1927).
27. Campbell v. Laclede Gaslight Co., 84 Mo. 364 (1884); Byron Reed Co. v. Klabunde, 76 Neb. 801, 108 N.W. 133 (1906); Watson v. Phelps, 40 Iowa 482 (1875).
28. Allison v. Thomas, 72 Cal. 562, 14 Pac. 309, 1 Am. St. Rep. 89 (1887).
29. Smith v. Fuller, 152 N.C. 7, 67 S.E. 48 (1910); Arnett v. Stephens, (Ky.) 251 S.W. 947 (1923); Shoute v. Griffiths, 4 Wash. 161, 30 Pac. 93, 31 Am. St. Rep. 910 (1892).
30. Tucker v. Leonard, 76 Okla. 16, 183 Pac. 907 (1919); Steele v. Sioux Valley Bank, 79 Iowa 339, 44 N.W. 564, 7 L.R.A. 524, 18 Am. St. Rep. 370 (1890).
31. Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304 (1887).
32. Ibid; American Mortg. Co. v. Hutchinson, 19 Ore. 334, 24 Pac. 15 (1890).
33. Brown v. Jackson, 3 Wheat. 449, 4 L. Ed. 432 (1818); Arnett v. Stephens, 199 Ky. 730, 251 S.W. 947 (1923); Harpham v. Little, 59 Ill. 509 (1871).

gives a general description of "all my land" in a particular area.[34]

This piling up of distinctions upon other distinctions would be particularly confusing if it did not point to the really basic reasoning behind all the rules and distinctions made by the courts. When the courts feel the necessity to throw out the rules, they fall back upon the really decisive fact, whether there was a bona fide intention to purchase and sell the land or merely the grantor's interest. After all, it was upon this basic question that the rules were originally laid. For whatever the reasons the courts originally gave for such a holding, the fact is that the older authorities could see no reason why a deed of bargain and sale, rather than quitclaim, should not have been given when an actual intention to purchase the *land* existed. Later decisions took into consideration the fact that quite often a quitclaim was given in just such a situation, though they looked elsewhere for reasons to relax their former rulings.

And then the various limitations were placed upon both of the rules; the hidden reason behind each distinction being the basic fact of intention to purchase the land. Some provided for stricter requirements of the quitclaim holder to show his good faith intention such as reasonable consideration and greater diligence; others called it a deed of bargain and sale if such intention was proved.

This basic fact question should also be decisive as to non-recordable equities. Any bona fide purchaser cuts off outstanding equities, and if a bona fide intention to purchase the land existed, the quitclaim holder is as much a bona fide purchaser as the holder of any other type of deed.

So the rules as a whole are not bad; they try to reach a common end by different means. But they are definitely dangerous if the courts lose sight of the basic question. Lower courts are especially apt to apply the rules as they are stated without looking to the question of intention. Far more consistent and logical results will be obtained by use of that basic proposition alone, unencumbered by majority and minority rules and their distinguished offspring. Those rules are available in any fact situation and are backed by impressive authority, but the Wyoming Supreme Court, which has not yet ruled on the problem, would do a far greater service by looking through them and limiting its holding to the basic proposition of bona fide intention to purchase the land.

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34. Dow v. Whitney, 147 Mass. 1, 16 N.E. 722 (1888).