

Notice

“Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated.”

(Black's Law Dictionary)

United States v. Gallas

269 F. Supp. 141, US District Ct. for the
District of MD, 1967

The US claims it has rights to the land where its pipeline is buried by deed, by seizure, or by adverse possession.

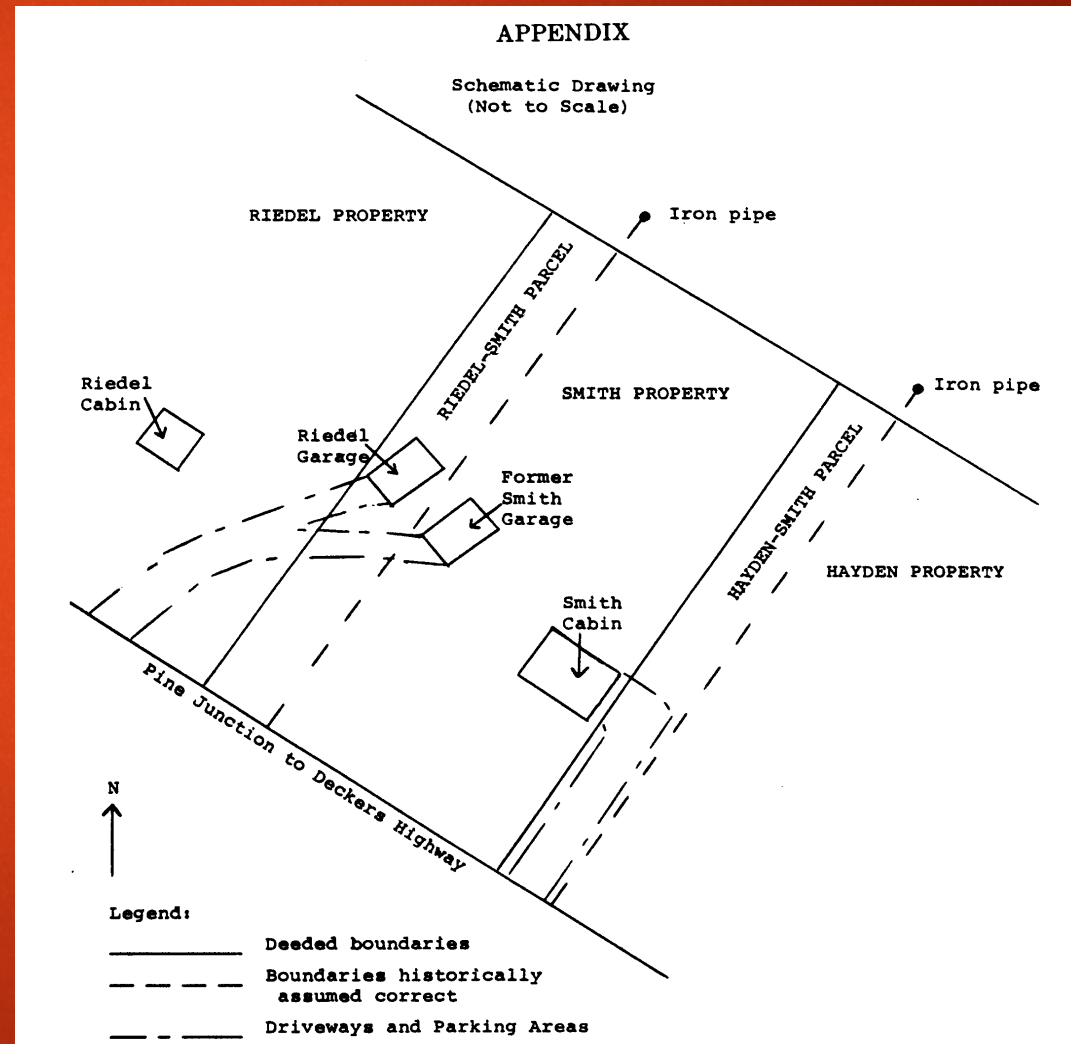
Gallas, whose new house is built directly on top of the pipeline, disagrees.

Smith v. Hayden

772 P 2d 47, Supreme Ct. of CO, 1989

Reliance on “erroneous”
corner markers:

Is the land use sufficient
for a claim of adverse
possession?



Color of title in Vermont

27 VSA § 348. Instruments concerning real property validated

(a) When an instrument of writing shall have been on record in the office of the clerk in the proper town for a period of 15 years, and there is a defect in the instrument ..., the instrument shall... be valid. Nothing herein shall be construed to affect any rights acquired by grantees, assignees or encumbrancers under the instruments described in the preceding sentence...

“Lost grant” claims

- ▶ No actual color of title
- ▶ Peaceable possession
- ▶ Knowledge
- ▶ Presumption of right
- ▶ Differs from prescription: use against sovereign bodies

“Misplaced” rather than “lost”

27 VSA § 404. Lost instruments affecting property titles; copy recorded in another town

When an instrument in writing affecting the title to real estate in more than one town is ***lost, destroyed or defaced***, if such instrument has been recorded in any town, upon complaint and proof, the superior court may order a copy of such record to be recorded in any town where a part of such real estate is situated. ...

Superior Oil Co. v. Harsh

126 F. 2d 572, US Ct. of Appeals, 1942

Hostility is necessary from the start of an adverse claim (an oil discovery in Illinois changes desires).

Can a “lost grant” claim save the day?



12 VSA § 462.

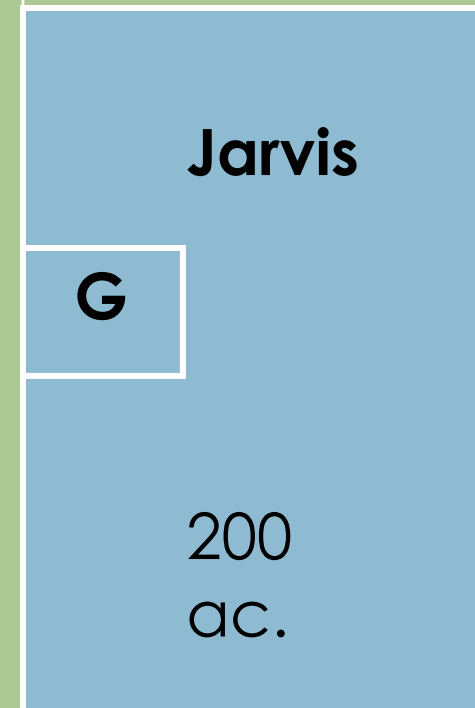
Lands for a public, pious or charitable use.

- Nothing contained in this chapter [Limitation of Time for Commencement of Actions] shall extend to lands given, granted, sequestered or appropriated to a public, pious or charitable use, or to lands belonging to the state.

Jarvis v. Gillespie

587 A 2d 981, Supreme Ct. of VT, 1991

- ▶ Adverse possession need not be 24/7, and can be best (not fullest) use of the land that current owner wants
- ▶ 12 VSA §462 distinguishes between governmental use (public purpose) versus proprietary use



MacDonough-Webster Lodge No. 26, Free and Accepted Masons v. Wells

834A 2d 25, Supreme Ct. of VT, 2003

ROUTE 15

Dennison (formerly Baptists)	Masons (formerly Baptists)	Wells
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- ▶ Are the Masons eligible for 12 VSA §462 as a public non-profit?

Siejack v. Mayor and City Council of Baltimore

313 A 2d 843, Ct. of Appeals of MD, 1974

- ▶ Adverse claims against the government do not always fail, as in this instance where the land was not being held for public uses.

Devins v. Borough of Bogota

592 A.2d 199, Supreme Ct. of NJ, 1991

- ▶ The letter of the law rather than the spirit of the law, and reasons why government-owned property should or should not be immune from or susceptible to claim by adverse possession.

The “Notorious Galdo Parcel”



Other Loopholes

43 USC 1068

Lands held in adverse possession; issuance of patent; reservation of minerals; conflicting claims

28 USC 2409a

Real property quiet title actions

Beaver v. United States

350 F. 2d 4, US Ct. of Appeals for the
9th Circuit, 1965

- ▶ A dispute between the federal government and an Arizona landowner over the movement of soil from the Arizona side of the Colorado River over to the California side.
- ▶ Does 43 USC § 1068 apply?

Split estates & adverse possession against the United States

- ▶ **30 USC §38. Evidence of possession and work to establish right to patent** - Where such person ...and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory [where located], evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto ... in the absence of any adverse claim...
- ▶ **30 USC §53. Possessory actions for recovery of mining titles or for damages to such title**

Railroads, split estates, and adverse possession

Chicago and North Western Railway Co. and Elliott Construction Co., Inc.v. Continental Oil Co.

253 F.2d 468, US Ct. of Appeals for the 10th Circuit,
1958

N.A.S. Holdings, Inc. v. Pafundi

169 Vt. 437, Supreme Ct. of VT, 1999

- ▶ “This is a case in which the unusual and complicated facts involved can easily draw attention away from the relatively simple legal issues that are the key to resolving the underlying conflict.”
- ▶ Can opening a quarry constitute adverse possession of mineral rights?

N.A.S. Holdings, Inc. v. Pafundi

169 Vt. 437, Supreme Ct. of VT, 1999

Pafundi, 1971

Green slate

Pafundi 1972?

or

NAS 1992?

Black slate

Rising & Nelson,
then NAS Holdings
1992

A landlocked parcel and a tax map error



Misunderstood deed language

"Excepting and reserving therefrom a right-of-way sixteen (16) feet in width along the southerly line of the above described premises running easterly and connecting with certain other rights-of-way described in deeds recorded in [book, page] and the deed to Rathburn and wife above referred to said right-of-way to be for the lawful use and benefit of all owners of the premises herein described as well as owners of other lands of the grantor situate west of said premises."

