

Legal Analyses: Ms. Smith *and* Mr. Byrd had the *Right* to be on each of the properties

Legal Analysis:

**Ms. Rachel Smith
was in *Lawful Possession*
of 2233 Angler Ave.
on 5-10-2016.**

**Mr. Kevin Ray Byrd
Was in *Lawful Possession*
of 2232 Commercial Ave.
On 5-11-2016.**

**Ms. Smith, Mr. Byrd, and Ms. Wilson had the Right to remain
on the properties *at the times they were removed by Officers &
threatened with arrest if they returned (see EVENTS 9-20
beginning on page 186).***

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Relevant sections (to this case) of the CODE OF CIVIL PROCEDURE have been emboldened & highlighted in green for the purpose of simplification of interpretation. Words used to interpret the previous section of the code have been emboldened & highlighted in red.

CODE OF CIVIL PROCEDURE from *Official California Legislative Information* website:¹

SECTION 315-330

318. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action.

Section 318 tacitly establishes: "An action" is required for the recovery of the possession of real property when the property is possessed by another occupant. No action may be maintained for the recovery of real property after five years of possession of the property by an occupant who has fulfilled "statutory requirements" (see Section 323 on page 235) .

Definition of TACIT, Black's Law Dictionary:

“Silent; not expressed; implied or inferred; manifested by the refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter. Thus, tacit consent is consent inferred from the fact that the party kept silence when he had an opportunity to forbid or refuse.”²

Definition of REAL PROPERTY, Black's Law Dictionary:

“A term that is applied to land and immovable property on land such as buildings.”³

¹ “CALIFORNIA CODE OF CIVIL PROCEDURE”, *Table of Contents, on Official California Legislative Information website:* http://www.leginfo.ca.gov/.html/ccp_table_of_contents.html

² “Black's Law Dictionary”, *2nd Edition on TACIT:* <http://thelawdictionary.org/tacit/>

³ “Black's Law Dictionary”, *2nd Edition, on REAL PROPERTY:* <http://thelawdictionary.org/real-property/>

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321. In every action for the recovery of real property, or the possession thereof (*by a title holder*), the person establishing a legal title to the property (*Mr. Byrd*) is presumed to have been possessed thereof within the time required by law (*Mr. Byrd is to be presumed by Officers to have been in possession of the property for the amount of time required by law which establishes his the lawful Right to remain on the property*), and the occupation of the property by any other person (*i.e. Ms. Wilson*) is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action (*in which case, see SECTION 322, next page*).

“EVICTION”, *Black's Law Dictionary, 2nd Edition:*

Dispossession by process of law ; the act of depriving a person of the possession of lands which he has held, in pursuance of the judgment of a court. Reasonerv. Edmundson, 5 Ind. 395; Cowdrey v. Coit, 44 N. Y. 392, 4 Am. Rep. 690; HomeLife Ins. Co. v. Sherman, 46 N. Y. 372. **Technically, the dispossession must be by judgment of law; if otherwise, it is an ouster.** Mitchell v. Warner, 5 Conn. 497. **In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so.** Poth. Contr. Sale. pt. 2, c.1,⁴

4 Black's Law Dictionary, 2nd Edition, on EVICTION: <http://thelawdictionary.org/eviction/>

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322. When it appears that the occupant (*Mr. Byrd*), or those under whom he claims (*Ms. Wilson*), entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument (*see pages 46 & 47*), as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument (*such occupation and possession were underway*), decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely.

Section 322 re-inforces that: *A person has a right to seek to adversely possess a property so long as they physically reside there while in the process of fulfilling statutory requirements (next page). After five years, the property has been successfully "held adversely", & such occupant may then file an action to obtain the title in order to prove they have held the land in possession at least five years and fulfilled statutory requirements in order to perfect their claim & thus acquire the title.*

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Note: This section clearly defines "statutory requirements" for "perfecting an adverse possession claim":

323. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument (*pages 46 & 47 for Mr. Byrd, and 166 & 177 for Ms. Smith*), or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated (*pages 118-160*) or improved (*pages 2-185*);

2. Where it has been protected by a substantial inclosure (*see pages 172, 173, 183-185 for 2233 Angler., & also "BEFORE & AFTER PHOTOS" beginning on page 297*);

3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for **the ordinary use of the occupant**;

4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Section 323(4) establishes that: "*If part of the lot has been improved, all parts of the property typically considered "part of that same lot" are also considered to be 'in possession'.*"

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324. Where it appears that there has been an actual continued occupation of land, under a claim of title (after 5 years of possessing the property, when presenting to the court to secure the title), exclusive of any other right (as in "title holder did not exert their right to evict the possessor within given time period"), but not founded upon a written instrument (as in, "even when no initial paperwork was filed"- such as papers filed on pages 46 & 47), judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

Section 324 establishes that: "Even when the occupation of the land is 'not founded upon a written instrument' (such as Mr. Byrd's Claim papers on pages 46 & 47), that a land can still be considered 'held adversely' by a person who has continuously occupied the land & fulfilled statutory requirements (page 235). This statute recognizes a person's right to occupy an unoccupied & neglected land, & to cultivate that land & make improvements, in pursuance to perfecting an adverse possession claim.

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325. (a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) Where it has been protected by a substantial enclosure.

(2) Where it has been usually cultivated or improved.

(b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.⁵

Section 325 establishes that the possessor must "pay taxes in a timely manner".

⁵ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=00001-01000&file=315-330>

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WHEREAS after discovering *both properties neglected and physically abandoned for many years, & attested to such within their initial filing (pages 46-47 & 176-177), Ms. Smith and Mr. Byrd were not in derogation of any law via occupying 2233 Angler Ave. or 2232 Commercial Ave.,*

WHEREAS both parties *were taking necessary steps which are required for “perfecting an adverse possession claim” in the manner prescribed by law according to statutory requirements within the CODE OF CIVIL PROCEDURE sections 315-330, such as:*

1. Filing an initial “written instrument” (pages 46-47 & 176-177) with which constituting an adverse possession claim would be founded upon (see Section 323 on page 235) after explaining to the Supervisor at the KERN COUNTY ASSESSOR'S OFFICE that “the property had been left abandoned for many years & showing signs of neglect”; this step was necessary in order to “switch the taxes into Mr. Byrd & Ms. Smith's names, respectively”.
2. Performing 7 months of labor improving, maintaining, protecting, & cultivating the land & property (Section 323 on page 235).
3. receiving *this tax bill* in the mail; Mr. Byrd recently spoke with an office attendant at the Kern County Treasurer's Office regarding *making their first payment* before they were illegally ousted from their home.

Jordan Kaufman
Kern County Treasurer - Tax Collector
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301

2015-2016 SECURED PROPERTY TAX BILL

1 BILL TYPE: 2015-2016 SECURED

PAY ONLINE: www.kcttc.co.kern.ca.us

PROPERTY ADDRESS - DESCRIPTION: 2232 COMMERCIAL AV, LAKE ISABELLA, 2182 33

OWNER OF RECORD AS OF 01/01/15: ROSS JOHN J & CHERYL C

EVENT DATE: 01/01/15 **BILL DATE:** 08/05/15

6 BILL NO: 2015-1196343-00-7 **7 ASSESSOR TAX NO:** 263-352-03-00-2 **8 TRA:** 082-006 **9 1st INSTALLMENT:** 252.16 **10 2nd INSTALLMENT:** 252.15 **11 TOTAL DUE:** 504.31

YOUR TAX DISTRIBUTION		
TAXING AGENCY	RATE/PHONE #	TAX AMOUNT
GEN LOCAL GOVT	1.000900	381.41
KERNVILLE GOB 06B	002037	.77
KERNVILLE GOB 04C	005122	1.96
KERNVILLE 2004B	009117	1.95
KERNVILLE GOB 08C	021176	8.07
KERNVILLE 04A REF	029656	9.78
KERN HIGH RF 2011	008324	3.17
KERN HIGH 2004-D	004893	1.86
KERN HIGH RF 2012	006866	2.66
KERN HIGH RF 2013	006558	2.50
KERN HIGH RF 04C	006859	2.15
KCCD SRID 2002B	001990	.75
KCCD SRID 2002C	003338	1.27
TOTAL		504.31

VALUES	MINERAL	LAND	IMPROVEMENTS	OTHER IMPROVEMENTS	PERSONAL PROPERTY	EXEMPTIONS	12 NET TOTAL VALUE
01/01/15	0	19,472	18,064	0	0	0	38,136

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WHEREAS a seven months time had passed since the couple had moved onto the property,

WHEREAS the title holders of the property had not made any contact with Mr. Byrd, nor did they perform any action to evict Mr. Byrd or to protest his possession of the property,

WHEREAS Mr. Byrd *does receive* sufficient annual base income *to pay the property tax bills every year within the next five years within a timely manner, & was about to secure his first payment:*

WHEREBY ESTABLISHING

Mr. Kevin Ray Byrd

as the

HOLDER IN DUE COURSE

for the *title deed* to 2232 Commercial Ave. *as of 5-11-2016* ,

“Definition of *HOLDER IN DUE COURSE*:

A term for the original holder of an instrument that takes it in good faith and exchanges something valuable for it. AKA protected holder.”⁶

& Ms. Rachel Smith was the *HOLDER IN DUE COURSE* for the title deed of 2233 Angler Ave. on 5-10-2015.

⁶ “Black’s Law Dictionary”, *2nd Edition*, on *HOLDER IN DUE COURSE*: <http://thelawdictionary.org/holder-in-due-course/>

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An Additional Consideration:

**The *Lockean Proviso* &
The Lockean Theory of Labor**

“To prejudge other men's notions before we have looked into them is not to show their darkness but to put out our own eyes.”

John Locke

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Lockean Proviso

John Locke's *Second Treatise on Civil Government* was published in 1690 as part of *Two Treatises of Government*, & refuted the theory of *The Divine Right of Kings*.

The Divine Right of Kings was used as a political & religious doctrine to justify royal & political legitimacy; *it asserts that a monarch is subject to no earthly authority, deriving the right to rule directly from the will of God; the king is thus not subject to the will of his people, the aristocracy, or any other estate of the realm, including the Church.* It implies that only God can judge an unjust king, & that any attempt to *depose, dethrone or restrict his powers runs contrary to the will of God & may constitute a sacrilegious (punishable) act.*

Two Treatises of Government was published anonymously in 1689 by John Locke. The *First Treatise* attacks patriarchalism in the form of sentence-by-sentence refutation of Robert Filmer's *Patriarcha*, while the *Second Treatise* outlines Locke's ideas for a more *civilized society* based on natural rights & *contract theory*.⁷

Locke's works were well-known & frequently quoted by colonial leaders, being *the most quoted authority on government in the 1760-1776 period prior to American independence.* Thomas Jefferson was accused of *plagiarizing (copying)* Locke in certain sections of the Declaration of Independence by fellow Virginian delegate Richard Henry Lee.⁸

In his *Second Treatise on Government*, Locke asked by *what right an individual can claim to own one part of the world, when, according to the Bible, God gave the world to all humanity in common.* He answered that persons own *themselves* and *therefore* their own labor. When a person works, that labor enters into the object. Thus, the object becomes the property of that person.

Locke held that individuals have a natural right to homestead, but that they can do so only "...at least where there is enough, and as good, left in common for others". The proviso maintains that appropriation of unused resources is a diminution of the rights of others to it, & would be acceptable only so long as it does not make anyone worse off than they would have been before.

7 Laslett, Peter. "Introduction." *Two Treatises of Government*. Cambridge: Cambridge University Press (1988), 9.

8 From "John Locke – A Philosophical Founder of America", the *Wallbuilders* website: <http://www.wallbuilders.com/libissuesarticles.asp?id=99156#FN33>

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Excerpts From *Second Treatise of Government:*

Sec. 33. Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough, and as good left; & more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all.

Sec. 34. God gave the world to men in common; but since he gave it them for their benefit, & the greatest conveniencies of life they were capable to draw from it... He gave it to the use of the industrious & rational, (*and labour was to be his title to it;*) not to the fancy or covetousness of the quarrelsome & contentious. He that had as good left for his improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's labour: if he did, it is plain he desired the benefit of another's pains, which he had no right to, & not the ground which God had given him in common with others to labour on, & whereof there was as good left, as that already possessed, & more than he knew what to do with, or his industry could reach to.”⁹

Relation To Case:

WHEREAS *nature was taking over 2232 Commercial Ave. and 2233 Angler Ave., & was causing a hazard to surrounding community members which was set to worsen from facing continued negligence, & Mr. Byrd, Ms. Smith, Ms. Wilson were taking the properties back from nature to prevent them from destruction by the forces of nature,*

WHEREBY Mr. Byrd, Ms. Wilson, & Ms. Smith only occupied that which Mr. Ross & Mr. Henriquez had left *in negligence, & “as good left, as that already possessed, & more than they knew what to do with, or their industries could reach to.”,*

WHEREAS neighbors Rudy & Liz *and* neighbors who complained to Sheriffs “needed not complain, ought not to meddle with what was already improved by another's labour: if he did, it is plain he desired the benefit of another's pains, which he had no right to, & not the ground which God had given him in common with others to labour on.”

⁹ Constitution Society, *Transcript of Second Treatise:* <http://www.constitution.org/jl/2ndtr05.htm>