1943

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Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol31/iss3/6
FUSION OF LAW AND EQUITY—SUIT AT LAW FOR PURCHASE PRICE OF LAND

Upon breach by the vendee of an executory contract for the sale of land, the weight of authority is that the vendor’s remedy is in equity for specific performance, or at law for damages, rather than an action at law for the contract price. This is the rule laid down in the leading English case of Lord v. Pim decided in 1841. The reason given in this case is that the title to land can pass only by deed and a recovery of the purchase money will leave the title in the vendor, thus allowing him to have both the land and the vendee’s money. The above rule has met particular favor in those jurisdictions drawing sharp distinctions between actions at law and suits in equity.

A substantial minority of the jurisdictions, however, have taken the position that the vendor in an executory land contract

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containing dependent covenants may maintain a law action in 

assumpsit against the vendee for the balance due on the full 
purchase price, amounting in effect to a suit at law for specific 
performance. The objectionable qualities of an action for the 
purchase price mentioned in Laird v. Pim are avoided by requir-
ing the vendor to evidence his good faith by depositing the deed 
in court at the beginning of the action, to be awarded to the 
vendee if the suit is successful.

Kentucky has been cited as among those states allowing an 
action at law for the purchase price, but it is doubtful whether 
the precise question has ever been passed upon in this state. 
However, there is some dictum to lead one to believe that such an 
action may be maintained.

In Golden v. Riverside Coal and Timber Co., the appellant 
was defendant in a former action to which the appellee was not 
a party. In the former action the plaintiff sought to have an 
agreement with appellant concerning the sale of land declared 
an option to purchase which had expired rather than a contract 
to sell, thereby removing a cloud from the plaintiff's title. The 
apellant filed a counter claim for a judgment requiring the 
plaintiff to specifically perform the contract, which was granted. 
Before judgment had been rendered the plaintiff sold the land to 
the present appellee, against whom appellant filed a bill alleging 
that the appellee had actual notice of his contract and prayed 
that he be required to release any claim of ownership. The 
vendor (plaintiff in the former action) joined with appellee and 
their defense was that appellant was insolvent and unable to 
carry out his contract. The court held that the vendor could 
not abandon the contract under circumstances which justified a 
judgment against him in favor of appellant for specific perform-
ance and that the vendor's remedy "was to tender a good title

5 See, Noyes v. Brown, 142 Minn. 211, 171 N. W. 803, 805 (1919), 
Fairlawn Heights Co. v Theis, 27 Ohio Abs. 19, 14 N. E. (2d) 1, 4 
Atl. 737, 739 (1919), 5 Williston, Contracts (1937) Sec. 1366.
6 66 C. J. Sec. 1357 at page 1358, citing Golden v Cornett, 176 
Ky. 133, 195 S. W 1080 (1917) Golden v. Lewis, 176 Ky. 23, 195 
S. W 144 (1917). In the latter case the court said: "Where land has 
been sold by executory contract, the remedy of the seller, in the 
absence of facts which would justify its cancellation, when the buyer 
fails or refuses to take the property according to the contract, is to 
bring a suit to recover the purchase money or, in other words for 
a performance of the contract."
7 184 Ky. 200, 211 S. W 761 (1919).
and sue for specific performance of the contract, or for a recovery of the purchase money. This dictum may indicate that the court recognized the possibility of a suit at law for the purchase price.

Since there is no Kentucky decision directly upon the point it cannot definitely be said that Kentucky would allow an action at law for the purchase price. Nor is the dictum in the case mentioned strong enough to warrant such a view. But assuming the propriety of such action, would its effect be to decrease the jurisdiction of equity over the same type of case, thus making it more difficult to maintain an equity action for specific performance where the sole object of the suit is a money judgment? Clearly the jurisdiction of equity is not diminished. The power of courts of equity to deal with land or any interest therein is firmly established. Equity jurisdiction, once established because of the inadequacy or absence of a remedy at law, is not defeated by an extension by the law courts of the scope of their remedies so as to render them adequate. In such cases the plaintiff is not compelled to resort to his legal remedy but rather may seek relief either at law or in equity.

Although when the sole object of a suit is to obtain the purchase price of land the result in law and in equity is ostensibly the same, there are certain procedural incidents attaching to each remedy which may be material in determining which is more advantageous. Laches, marketable title, and hardship are defenses because of which equity may refuse to grant specific performance in a particular case. Whether or not these equitable defenses should be carried over to law actions is a matter upon which authorities differ. Probably law courts now follow the requirement of marketable title. However, a person may be barred by his laches from obtaining specific performance of a contract in equity whereas he might bring an

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8 Italics added.
10 1 Pomeroy, Equity Jurisprudence (5th Ed. 1941) Sec. 182; Clark, Principles of Equity (1924) Sec. 16; 30 C. J. S. Equity Sec. 21; ibid. Sec. 23a; C. J. Equity Sec. 21 and cases cited.
11 Note (1936) 34 Mich. L. Rev. 545, for a general discussion of the subject and authorities cited.
12 Walsh, Treatise on Equity (1930) 381; Ethington v Rigg, 173 Ky. 355, 191 S. W 98 (1917), Note (1909) 22 Harvard L. Rev. 529.
action at law up until the time the statutory period of limitation expires. The plaintiff then would find it advantageous to sue at law only when by his own neglect he has placed himself in a position where the defendant might invoke against him the doctrine of laches. Also specific performance in equity will be denied when it appears that hardship or injustice will result to one of the parties.¹⁴ Since law courts usually do not look behind the legal right asserted by the plaintiff to determine if undue hardship will result to the defendant,¹⁵ a law suit will prove advantageous to the plaintiff under circumstances which would provide the defendant with the defense of undue hardship if the action were brought in equity.¹⁶ The plaintiff would be to a great extent guided by his own conduct and by a survey of the possible defenses available to the defendant in order to determine whether equity or law affords the better remedy under the particular circumstances of his case.

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¹⁵ A party is not discharged merely because the contract turns out to be difficult, unreasonable, dangerous or burdensome, Runyon v. Culver, 168 Ky. 45, 181 S. W 640 (1916).

¹⁶ Woollums v. Horsley, 93 Ky. 582, 20 S. W 781 (1892)