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Andrew Clark

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NOTES
THE ORIGIN AND BASES OF THE DOCTRINE OF EQUITABLE CONVERSION

The doctrine of equitable conversion has become firmly imbedded in the law today, yet few trouble themselves to go back beyond the firm application of the doctrine by Lord Eldon. In *Seton v. Slade*¹ Lord Eldon states the doctrine clearly as it is recognized today, “The effect of a contract for purchase is very different at Law and Equity. At law the estate remains the estate of the vendor and the money that of the vendee. It is not so here (in equity). The estate from the sealing of the contract is the real property of the vendee. It descends to his heirs. It is devisable by his will; and the question, whose it is, is not to be discussed merely between the vendor and vendee; but may be to be discussed between the representatives of the vendee.”

The purpose of this paper is to determine where this doctrine of equitable conversion comes from, the bases for it, and if it was the well settled law of England prior to the beginning of the nineteenth century. While as said above the doctrine is well established today and has been since the time of Lord Eldon, it has not been traced very far beyond that period. The American and English Encyclopedia of the Law² says, under the head “Conversion and Reconversion”, “Origin of the Doctrine—The doctrine of equitable conversion has its origin in the maxim that equity looks upon that as done which ought to have been done, and it is one of the familiar and well-settled principles of equity jurisprudence.” In support of this several cases are cited,³ the strongest of these perhaps are *Guidot v. Guidot* and *Lechmere v. Carlisle (Earl of)*. Sugden on Vendors⁴ says however, that up

until recently (meaning Lord Eldon's time) this doctrine of equitable conversion, in risk of loss cases, was not recognized. He cites *Stent v. Baily* and *White v. Nutt*, and says first that *Stent v. Baily* holds differently from the present rule; but the statement he gives in that case is pure dictum. Mr. Sugden then gives the statement in *White v. Nutt* that if both lives were dropt before the time for performance of the contract, specific performance might not be decreed, but here again mere dictum is given for authority; and it will be noted that the case holds that where one of the lives contracted for did not drop specific performance would lie. Sir Thomas Sewell in *Fletcher v. Ashburner*, a case decided in 1779, seemed to be of a different opinion from Sugden; he said, "Nothing is better established than the principle, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted.—"

This doctrine is not new and was not new at the time of its application by Lord Eldon. To show this, the doctrine must be traced back to an early date, before the time of Lord Eldon. This can best be shown by a series of cases. Two very early cases would seem to indicate that there was some question as to just what the law really was at the close of the sixteenth century. In *Weston v. Danvers*, a case decided in 1584, this language is found and represents the full context as reported in the English Reports, "The heir is not in equity bound to assure lands, which his father bargained and took money for." This represents the contrary view of equitable conversion, at least this short sentence would seem to disagree with it. However, turning to the other case decided after the turn of the century in 1631 we find the case of *Higham v. Ladd*, and it is reported in this language, "Higham contra Ladd, died before livery of seisin, and before assurance perfected, ordered to be perfected." This seems to indicate that the law was at that time somewhat unsettled, but coming in rapid succession after this last case and agreeing with it the courts stick strictly to equitable conversion

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*1 P. Wms. 61, 24 Eng. Rep. 294 (1702).
and apply its doctrine as we know it today. Therefore we see that the doctrine was recognized and used about three centuries before its use by Lord Eldon at the beginning of the nineteenth century.

The next case which appears about thirty years later is Daire v. Beversham\(^\text{10}\) a case decided in 1663. In this case the plaintiff as heir of the deceased sought to recover land which the deceased had contracted to purchase but had died before completing the sale. The court held that the land passed to the heir on the death of the deceased, and said, "—for that the purchaser had an equity by contract to recover the same (the land); and the vendor stood entrusted for him till the legal conveyance was executed; and cited the Lady Foliamb's case\(^\text{11}\) in 1651, wherein it was ruled, that if articles are signed for a purchase and then the purchaser deviseth the lands, and dieth before any other conveyance is executed, the lands to pass in equity."

Later cases have also followed this doctrine, Greenhill v. Greenhill\(^\text{12}\) and Potter v. Potter.\(^\text{13}\) Another case decided in 1666, Stephens v. Baily\(^\text{14}\) is just as clear and seems to base its reasoning on the trust relation between the vendor and vendee. In this case there was a contract to sell land and before the contract was carried out the vendor died and the land passed to the heir. The court held: that the heir must convey, for where a man contracts to purchase land, and the vendor dies before assurance is made, the heir of the vendor stands entrusted to the purchaser and is compelled by equity to execute the estate to him. Lord Eldon does not state this doctrine of equitable conversion any plainer. As said before the basis of this case and the first case seems to be tied up with the trustee theory. Here are two cases which follow what we recognize as the doctrine of equitable conversion and do so without any question as to its correctness.

Another case appeared about fifteen years later in 1678; it is Bubb's Case.\(^\text{15}\) Here Bubb contracted with A to purchase lands and made a down payment. A died and B was made his executor, and C was his heir. B sued for the balance of the

\(^{10}\) 1 Ch. Cas. 39, 21 Eng. Rep. 793 (1663).
\(^{11}\) Godb. 165, 78 Eng. Rep. 100 (1651).
\(^{15}\) Freeman's Ch. Cas. 33, 22 Eng. Rep. 1044 (1678).
purchase money from Bubb and joined C. The court held that B was entitled to the money and Bubb could sue C for specific performance of the contract. Here again is a case using the doctrine of equitable conversion as plainly as it is used today.

Two other cases appeared a few years later which made it quite plain that Bubb's Case represented the law at this time. The first is Baden v. Pembroke\textsuperscript{16} decided in 1690. Here there was an agreement to convey land and death overtook the vendor before a conveyance was made. The court held: that the purchaser should go on, and the heir convey and the purchase money be paid to the executors. The second is Gell v. Vennedun\textsuperscript{17} decided in 1694. Here the defendant's ancestor, to whom he is the heir, articed in his life time for the sale of certain land, which he covenanted to convey. On suit by the purchaser the court held: "the heir must convey as much as his ancestor for after the sealing of the articles he was in the nature of a trustee for the purchaser of the land, in which trust they descended to the heir." This, beyond question, is the doctrine of equitable conversion plainly stated in cases which were decided at the close of the seventeenth century. These cases as the cases given before seem to base their result on the trustee theory.

There was another case in 1693 and it dealt with the hardest part of equitable conversion, risk of loss. The case is Cass v. Rudele\textsuperscript{18} many times discussed, and some writers think there was a misprint of the record or that the whole case does not appear. However that may be, the case decreed specific performance where the property contracted to be sold was destroyed before time for completion of the contract. This is equitable conversion and the case applies it as equitable conversion to this situation whether other facts are controlling or not.

The trail of precedents has now been traced through two centuries, and at the beginning of the eighteenth century in 1702 came White v. Nutt\textsuperscript{19}. This is another case on which there has been much discussion, and in this case largely on the dictum it contains. The case holds however, that where there was a contract to purchase an estate of two lives and one of them was destroyed that specific performance lay. It was added by way

\textsuperscript{17} Freeman's Ch. Cas. 199, 22 Eng. Rep. 1158 (1694).
\textsuperscript{18} 2 Vern. 280, 23 Eng. Rep. 781 (1693).
\textsuperscript{19} Supra, note 6.
of dictum that if both lives had dropt, specific performance might not be decreed. The fact remains however, that this case decided exactly one-hundred years before Lord Eldon's decisions, uses equitable conversion as plainly as it is used today. Leaving the dictum for what it is, the case is very clear in applying the doctrine.

Three years later in 1705 in the case of Best v. Stamford\textsuperscript{20} this language is found, "Money directed to be laid out in land, shall be taken as land, in equity, for this court is to enforce the execution of agreements and therefore looks upon the land agreed to be sold, as money, and money agreed to be laid out in land, to be in fact real estate,—". This case by this language shows how well imbedded the doctrine had become at the beginning of the eighteenth century.

Many cases involving the equitable conversion doctrine are marriage contracts agreeing to purchase land upon marriage. Fitting into the trail of equitable conversion came two of this type of cases, Lechmere v. Carlisle (Earl of)\textsuperscript{21} a case decided in 1733 and Lingen v. Sowray\textsuperscript{22} decided in 1715. Both cases held that the money agreed to be laid out in land shall be taken as land and pass accordingly to the heir.

Then in 1738 in the case of Green v. Smith\textsuperscript{23} this language was used, "That the vendor of the estate is from the time of the contract considered as the trustee for the purchaser and the vendee as to the money a trustee for the vendor." The doctrine of equitable conversion had become more and more fixed into the law as this statement shows. The principle seems to be accepted without question as to its authority. Later in 1745 the case of Pollexfen v. Moore\textsuperscript{24} follows this case and its doctrine.

The courts, as has been shown above, were quite accustomed to the use of the doctrine of equitable conversion by this time and this is plainly brought out by the statement of Sir Thomas Sewell in Fletcher v. Ashburner,\textsuperscript{25} quoted before, "Nothing is better established than this principle, that money directed to be laid out in the purchase of land and land directed to be sold

\textsuperscript{20} 1 Salk. 141, 91 Eng. Rep. 141 (1705).
\textsuperscript{21} Supra, note 3.
\textsuperscript{22} 1 P. Wms. 172, 24 Eng. Rep. 343 (1715).
\textsuperscript{23} 1 Atk. 572, 26 Eng. Rep. 360 (1738).
\textsuperscript{24} 3 Atk. 272, 26 Eng. Rep. 959 (1745).
\textsuperscript{25} Supra, note 7.
and turned into money, are to be considered as that species of property into which they are directed to be converted; and this in whatever manner the direction is given; whether by will, by way of contract, marriage articles, or otherwise, and whether the money is actually deposited or only covenanted to be paid, and whether the land is actually conveyed or only agreed to be conveyed." Such a statement as this which includes all the forms that equitable conversion may come from, shows beyond question, in view of the decisions previously given, that equitable conversion had long been a part of the law before this opinion was given.

After this decision come the decisions of Lord Eldon in *Paine v. Mellor*, *Seton v. Slade* and others. Since these there has been no question as to the doctrine being firmly imbedded in the law. The latter cases follow equitable conversion completely as shown by *Poole v. Shergold* and *Revell v. Hussey*.

Through this series of cases beginning with *Higham v. Ladd* in 1631 down to the beginning of Lord Eldon’s cases at the beginning of the nineteenth century, it will be seen that the doctrine of equitable conversion as we know it today is not one whose beginning was with Lord Eldon’s decisions, but is one of the oldest and best established doctrines in the law. The basis given in most of these cases seems to be the trustee theory, whereby the vendor holds the land as trustee for the purchaser and the purchaser holds the purchase price as trustee for the vendor. This series of cases may not be the strongest decisions that have been handed down nor may they be all the decisions, but they are a group which show beyond question that the doctrine of equitable conversion goes at least back to the sixteenth century and perhaps even further. Therefore when Lord Eldon brought the doctrine to its great prominence he had plenty of backing through previous decisions on which he could rely.

Andrew Clark.

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Supra, note 1.


2 Ball & Beatty 250 (1813).

Supra, note 9.