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Specific Performance of Contracts to Convey Land

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STUDENT NOTES

SPECIFIC PERFORMANCE OF CONTRACTS TO CONVEY LAND.—The jurisdiction of equity to decree specific performance is based upon the inadequacy of the legal remedy and not upon an arbitrary distinction as to the different species of property. Paddock v. Davenport, 107 N. C. 710, 12 S. E. 464 (1890). Despite this rule and its frequent application most jurisdictions decree specific performance of land contracts as a matter of course, and the inadequacy of the plaintiff's remedy at law need not be shown. The result is almost invariably the correct one, but there are exceptional cases to which such an arbitrary rule should never be applied. The jurisdiction of equity is powerful and discretionary, and this power and discretion should never be abused.

An idea of the attitude assumed by courts and text writers may be had from the following authorities. Clark in his “Principles of Equity,” Section 42, says that "damages for breach of a contract to convey land are always considered inadequate." Pomeroy in his "Specific Performance of Contracts," Section 10, states that "where land, or any estate therein is the subject matter of the agreement, the equitable jurisdiction is firmly established." An examination of the cases cited in connection with the above sections and the cases cited in connection with 36 Cyc. 552 and 25 R. C. L., page 270, will illustrate and explain the opinions of Pomeroy and Clark, which as statements of majority law can not be refuted. The number of cases granting specific performance of contracts to convey real estate as a matter of course, is astounding, and no attempt to enumerate them will be made.

The general rule, as stated, is indisputable; however a few cases, at first blush, seem to be getting away from the historical rule, viz., that courts will assume the damages for a breach of contract concerning land are always inadequate. Most of these cases, however, are necessary exceptions to the historical rule, and are not followed in their own jurisdictions.

In the case of Hazelton v. Miller, 25 App. D. C. 337, 202 U. S. 71 (1905), the court refused to grant specific performance to a vendee of land because he had contracted to sell the same land to a third party. The decision rested on the ground that the plaintiff by his own act showed that damages would adequately compensate him. No court could hold that the land could have any value, other than speculative, to him, and as he had shown the amount he intended to make, it would be absurd to hold he could not be adequately compensated in damages.

In Lenour v. McDanel, 80 Fla. 500, 86 So. 435 (1920), which has been cited as placing equitable jurisdiction upon the inadequacy of the remedy at law, the chancellor stated that the exercise of equity juris-
dition for the specific performance of contracts for the purchase of property does not proceed upon any distinction between personal estate and real estate, but depends on the question whether damages at law may not in the particular case afford a complete remedy. The case is little authority, however, as it concerns an action to compel the conveyance of a merchantile business. Moreover the rule has been stated in many other states, which in spite of it, assume that for a breach of contract concerning land the remedy at law is inadequate. The rule as stated in the Lenoir case, supra, is also laid down in Clark v. Flint, 32 Pick. (Mass.) 231, 33 Am. Dec. 733 (1839), yet in Hayes v. Bragg, 220 Mass. 106, 107 N. E. 869 (1915), the remedy at law for breach of a contract to convey land was assumed to be inadequate. In Wait v. Kern River Min. Mill and Developing Co., 157 Cal. 16, 106 Pac. 93 (1909), the rule of the Lenoir case, supra, was substantially stated, yet in McCarty v. Wilson, 184 Cal. 194, 193 Pac. 578 (1920), the remedy at law for breach of contract concerning land was assumed to be inadequate.

These cases show that though a state recognizes the true ground of equitable jurisdiction; yet, it will refuse to acknowledge it in the case of land contracts. Pomeroy in his “Specific Performance of Contracts,” Section 10, states the situation very well. “Land is often, especially in this country, bought and sold simply as merchandise, for mere purposes of pecuniary profit, possessing no interest in the eyes of the purchaser and owner other than its market value. The jurisdiction however, extends to these cases. The rule having once been established is now universal.” Other cases which have been seized upon as getting away from the historical rule are: Henryford v. Moore, (Mo.), 181 S. W 389 (1915), in which the plaintiff failed to prove a valid contract; Farrister v. Sullivan, 231 Mo. 343, 132 S. W 722 (1910), in which the plaintiff failed to prove a clear and unambiguous parol agreement to convey land; Dazey v. Elam, et al., 153 Mo. App. 343, 134 S. W. 85 (1911), where equity refused to give specific performance of a contract of security (mortgage on land) when to do so would injure an innocent purchaser of the land, and because the one breaching the contract was solvent thus giving the plaintiff an adequate remedy at law; Marthinson v. King, 150 Fed. 48 (1906), which is little authority as it is based on a statute; Thoeatt v. Jones, 87 Fed. 286 (1893), in which case plaintiff contracted to buy land from the defendant A for defendant B. B bought the land direct from A and plaintiff asked specific performance which was denied because he had an adequate remedy at law to recover the compensation promised him. In Porter v. Frenchman's Bay and Mt. Desert Land and Water Co., 84 Me. 195, 24 Atl. 814 (1892), the vendor of a contract to convey land was denied specific performance because he failed to show that his remedy at law was inadequate. This case would be excellent authority if it were not for a statute in Maine which denies jurisdiction where the remedy at law is inadequate.

The case of Blake v. Flaherty, 44 N. J. Eq. 228, 14 Atl. 128 (1888),
is a clear exception to the historical rule; but, unfortunately, it has not been followed in New Jersey. The plaintiff bought a small tract of land for fifty-five dollars ($55.00) and failed to show that the land had any peculiar value to him. Equity failed to take jurisdiction because the costs in equity would exceed the value of the land, and the court ruled that the plaintiff's remedy at law was adequate. With the exception of this case, the other cases cited are of little if any authority for the principle that one coming into equity must show that he has no adequate remedy at law where land contracts are concerned.

As has been pointed out, a few cases have denied specific performance of contracts concerning land. In these cases, however, the plaintiff's remedy at law was obviously adequate, and to grant relief would have been a flagrant violation of equitable jurisdiction. Why courts of equity have refused to require a plaintiff to show the inadequacy of the remedy at law is inexplicable. Because the remedy at law is inadequate in the great majority of cases is no reason for the courts to cling blindly to an historical dogma which is becoming less desirable and more absurd. True "One parcel of land may vary from, be more commodious, pleasant and convenient than another parcel." Cud v. Rutter, 24 Eng. R. 521 (1719), but should not the failure of these reasons in the individual instance defeat equity's jurisdiction? Property in this country which is bought and sold for no motive other than speculation should not have the magic word "unique" affixed to it merely because the courts fear to break away from a rule which they defend by saying that it is as old as our civilization itself. Land may have been and might be of a peculiar and unique nature in England but our courts have no jurisdiction over England's land. What is there to cause one to presume that a quarter section in our midwest is unique? It might be but let it be proved and not assumed. Were a jury to sit in the chancellor's place and the correct rule of equity's jurisdiction given them, their verdict would destroy that glorious old maxim "All land is unique." Just how long courts of equity will continue this blind devotion to an historical absurdity is impossible of determination. All in all, equity's jurisdiction in respect to contracts concerning land may be said to be "Unique."

JAMES W. HUME.

CRIMES—THE THIRD DEGREE—CARROLL'S KENTUCKY STATUTES (1930).—Sec. 1649b-1. "Sweating act;" Confessions.—That what is commonly known as "sweating" is hereby defined to be the questioning of a person in custody charged with crime in an attempt to obtain information from him concerning his connection with crime or knowledge thereof, after he has been arrested and in custody, as stated, by plying him with questions or by threats or other wrongful means, extorting from him information to be used against him as testimony upon his trial for such alleged crime.

Sec. 1649b-2. It shall be unlawful for any sheriff, jailer, marshal,