

Specific Performance--Equitable Jurisdiction (Bockler v. Wurfel et al., 254 P. 353 (Or. 1927))

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recovery of real estate and untenable for personal injuries? "Are property rights, strictly speaking, of more importance to the infant than the rights of person?"

SPECIFIC PERFORMANCE—EQUITABLE JURISDICTION—In 1919, the appellant Bockler contracted to buy from Wurfel certain realty on which was located a store building together with the merchandise contained therein. Part of the purchase price was to be paid in cash, the balance by delivery of a deed of a lot in Portland. Appellant moved upon the premises where he remained for five years. Wurfel, after considerable trouble perfected his title and tendered a deed which was not accepted. He sued for specific performance. The court denied a decree, finding that his title was defective as to part of the realty and that the lot to be deeded by Bockler was owned by his wife who had not joined in the contract. Mrs. Bockler then began an action to have removed an alleged cloud upon her title. Her husband was joined as a party defendant. *Held*, that Mrs. Bockler was the absolute owner of the Portland lot, that Wurfel should recover from the appellant Bockler \$3500, the agreed value of the lot, and made this sum a lien upon the property purchased. Pending appeal, Wurfel issued execution and at the public sale became the purchaser of the property. *Bockler v. Wurfel, et al.*, 254 Pac. 353 (Sup. Ct. Oregon, 1927).

Appellant's principal objection was that the result was wholly inequitable, his vendor now having both the property and a substantial part of the purchase price. This seemingly carried force, but the court pointed out that the vendee had had the use of the store for five years and quoted from his testimony to show the value of the business to him. The appellant's further objection that the passage of time precluded a decree of specific performance of the original agreement was disapproved. Time was not of the essence, the vendor had perfected his title without having been guilty of laches, and the court could at this time properly decree specific performance of the original agreement to the extent possible. *Katz v. Hathaway*, 66 Wash. 355, 119 Pac. 804 (1911).

The trial court in proceeding to dispose finally of the entire controversy was held to have properly exercised its equitable jurisdiction. This accords with general principles of Equity and with the doctrine of similar cases. *Wood v. Hill* 214 App. Div. 417, 212 N. Y. Supp. 550 (1925); *Madsen v. Bonneville Irr. Dist.*, 65 Utah 571, 239 Pac. 781 (1925). As was well said in *Brown v. Winne*, 92 Okla. 289, 219 Pac. 114 (1923), "A Court of Equity which once obtains jurisdiction of a controversy administers complete relief."

EQUITY—ORAL AGREEMENT TO BUY PROPERTY AND HOLD FOR MORTGAGOR—STATUTE OF FRAUDS.—The plaintiff executed a deed of trust on a plantation to defendants as security for loans. By written agreement defendant Tchula was to operate the property for plaintiff's benefit until 1925, but in February, 1924, plaintiff was informed that the property would be sold in March, 1924, due to the pressure of the state bank examiner. It was thereupon verbally agreed that the de-