St. John's Law Review

Volume 1
Number 2 *Volume 1, May 1927, Number 2*

Article 17

Equity--Oral Agreement to Buy Property and Hold for Mortgagor (Tchula Commercial Co. et al. v. Jackson, 111 S. 874 (Miss. 1927))

St. John's Law Review

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-

fendant Tchula should buy in the property and continue to operate it for plaintiff's benefit with the right to him to redeem before February 1, 1925. This agreement was stipulated to be reduced to writing and the sale was to be delayed until such time as the agreement to permit redemption was executed. The sale took place without the agreement being executed or reduced to writing and defendants refused to permit the redemption thereafter although plaintiff was ready and willing to meet the loans. The property had been bought in by defendant bank which in turn conveyed it to its present president who was also president of the Tchula Commercial Co. Plaintiff sued claiming conspiracy and fraud by defendants to deprive him of his property. The statute of frauds was set up in bar. *Held,* that equity could grant relief, the action not being for specific performance but for damages due to defendants' fraud in breaching the contract. Further, that an agreement of the nature involved, orally made, was enforcible in equity, despite the statute of frauds. Judgment for the complainant affirmed in part and reversed in part. Tchula Commercial Co., et al. *v.* Jackson, 111 So. 874 (Miss. 1927).

There is some authority for the latter proposition. Vannoy *v.* Martin, 41 N. C. 169 (1848), 51 Am. Dec. 418; Griffin *v.* Coffey, 9 B. Mon. (Ky.) 452 (1849), 50 Am. Dec. 519; Note: 102 A. S. R. 244; Soggins v. Heard, 31 Miss. 426 (1856). This is upon the theory that to permit the defense to be interposed that the agreement was not in writing would be to allow the statute to cover a fraud. Schroeder *v.* Young, 161 U. S. 334 (1895), 40 U. S. (L. ed.) 721; Turpie *v.* Lowe, 158 Ind. 314, 62 N. E. 484 (1902); Griffin *v.* Coffey, supra; Laing *v.* McKee, 13 Mich. 124 (1865), 87 Am. Dec. 738 (tax sale). Thus where a mortgage is foreclosed under an oral agreement to reconvey to the mortgagor after the period of redemption has expired, upon payment or tender of the amount due, the mortgagor is bound by the agreement in equity. Ogden *v.* Stevens, 241 Ill. 556, 89 N. E. 741 (1909); Turpie *v.* Lowe, supra; Dow *v.* Bradley, 110 Me. 249, 85 Atl. 896 (1913); Oertel *v.* Pierce, 116 Minn. 266, 133 N. W. 797 (1911); Turner *v.* Johnson, 95 Mo. 431, S. W. 570 (1888); Arnold *v.* Cord, 16 Ind. 177 (1861). As to the former proposition that an action for damages for breach of the oral contract may be maintained see Johnson *v.* Hoover, 73 Ind. 395 (1880), in accord. It has also been held that if the party sought to be charged has, by fraudulent purposes, prevented the contract from being reduced to writing, a court of equity will grant relief notwithstanding the statute of frauds. Peek v. Peek, 77 Cal. 106, 19 Pac. 227 (1888); McAnnully *v.* McAnnully, 120 Ill. 20, 11 N. E. 397 (1887); Glass *v.* Hulbert, 102 Mass. 24 (1869), 3 Am. Rep. 418. Thus if property has been obtained by reason of a promise to hold it for another, and the latter, confiding in the purchaser, is prevented from taking such action on his own behalf as would have secured the benefit of the property to himself, it would be against equity and good conscience for the latter to refuse to perform his solemn agreement. 26 R. C. L. 1244; 5 Ann. Cas. 173. In this case the purchaser is treated as a trustee for the debtor under a constructive trust. Soggins *v.* Heard, 31 Miss. 426 (1856); Story's Eq. (14th. ed. 1918) secs. 452-4; 27 C. J. 340-342. Such trusts are not within the statute because they rest in the end on the doctrine of estoppel and the operation of an estoppel is never effected by the statute of frauds. Parker *v.* Catron, 120 Ky. 145, 85

S. W. 740 (1905). Thus where the debtor has been lulled into a feeling of false security by the statements of the defendant, the latter is estopped from setting up the statute of frauds because the instrument was not in writing. Combs *v.* Little, 4 N. J. Eq. 310 (1843), 40 Am. Dec. 207. In view of the strict scrutiny of this class of case by the New York courts, it is doubtful whether the instant holding would be supported in New York. But it is clearly established in this jurisdiction that where the parties stand in close confidential relations, an abuse of confidence produced by fraud will move a court of equity to grant relief. Wood *v.* Rabe, 96 N. Y. 414 (1884); Goldsmith *v.* Goldsmith, 145 N. Y. 313, 318, 39 N. E. 1067 (1895); Leary *v.* Corvin, 181 N. Y. 222, 228, 73 N. E. 984 (1905).

CRIMINAL LAW—LARCENY.—The defendant was the tenant of an apartment under a lease, the term of which had expired, but the right of occupation and possession continued under statute. He inserted an ad in a newspaper offering to sub-rent by month or year. The complaining witness answered the ad and paid the defendant a sum which represented the agreed rental, but did not receive possession either on the day when the contract was made or any other time. The defendant continued to run the ad. The indictment contained two counts. The first charged obtaining money under false pretenses and the second with larceny by trick and device. The first count was dismissed and the defendant was found guilty on the second. *Held,* that the evidence was insufficient to support the indictment charging larceny by trick and device. Judgment reversed and indictment dismissed, two judges dissenting. People *v.* Noblett, 244 N. Y. 355 (1927).

For a discussion of the principles involved see supra, page 176.

CONSTITUTIONAL LAW—The action was brought to test the constitutionality of sec. 167-174 of the General Business Law of New York which forbade the resale of theatre tickets at an advance of more than 50 cents above the printed price. The case was heard by a special Constitutional Court below and the decree dismissing the bill was brought to the Supreme Court for review. *Held,* the act is unconstitutional in that it deprived the plaintiff of property without due process of law. Decree reversed and injunction granted. Tyson *v.* Banton, 47 Sup. Ct. 426 (U. S. 1927).

In this case the Supreme Court holds unconstitutional a statute of the State of New York fixing the resale price of theatre tickets by so called brokers to fifty cents above the price printed on the ticket. Other features of this statute had already been upheld by the court. See Weller *v.* New York, 268 U. S. 319 (1926). It follows that the only difficulty with the statute was that it attempted to fix prices. This the majority said can not be done in an industry not affected with a public interest. The majority reaffirm Lord Hale's proposition concerning industries affected with a public use but leaves wide open the discovery of a method of ascertaining which industries can be included under that head. It must appear therefore that the ultimate solution to the problem is to be found by the judicial method of inclusion and exclusion. The dissenting judges divide into three classes. Mr. Justice Stone points out that the statute does not necessarily fix prices but can