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Equity

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Subrogation

1. A executes to B a mortgage upon his land to secure B three bonds of $1,000 each, payable in one, two or three months. C is surety on the bonds. A defaults in the payment of the first bond, and C pays it. A makes further default in the two remaining bonds, and the mortgage is foreclosed. At the foreclosure sale, the property only brings $2,500. C claims that he having paid the first bond is entitled to be subrogated to B's position thereon and to be first paid out of the proceeds of sale. What is your opinion?

C's contention is unsound. Subrogation is not allowed when it might hurt the credit, or, to put it figuratively the surety cannot step into the creditor's shoes before the creditor is through with his shoes.

Marshalling Assets

2. A is the owner of two tracts of land "White Acre" and "Black Acre". He executes to B mortgage on both tracts to secure B a debt. The mortgage is duly recorded. Afterwards C buys "White Acre". B starts to enforce his lien on "White Acre". C, the purchaser thereof, objects. What are C's rights?

Since this involves the foreclosure of a mortgage a court of equity has jurisdiction Having jurisdiction it will in this case marshal assets, i.e. satisfy B's mortgage out of B's property first, and resort to C's property only if necessary. This does no harm to B and protects C. Assuming that C took under a warranty deed this puts the shoe on the right foot to start with and saves an extra law suit.

3. What is the test by which the jurisdiction of a court of equity, as contra-distinguished from a court of common law, is determined?

If there always has been an adequate remedy at common law, then a court of equity does not have jurisdiction. The rule is generally loosely stated: "Where there is an adequate remedy at law, equity has no jurisdiction."

Constructive Trust

4. A empowers and directs B, his agent, to purchase for him a farm known as "White Thorne" belonging to C. B, upon seeing the farm, decides to buy it for himself and does so. A, upon finding what B has done, demands that B convey the property to him. B refuses to do so. Can A compel him to do so? Give reasons.

Yes. B holds the farm as a constructive trustee for A, and A is entitled to decree to prevent the fraud of an agent's disloyalty. Wherever land is involved money damages are conclusively presumed to be inadequate.

Surety v Cr Rights

5. A owes B a note of $1,000 upon which C is surety. A also gives B two bonds of $500 each as additional security. Before the maturity of the note, A prevails upon B to release one of the bonds, which A thereupon sells, and the proceeds therefrom he spends. A subsequently becomes insolvent, and B thereupon sues C, the surety. What are C's rights as between B and himself?

C was released pro tanto. A creditor impliedly promises that he will do no act which might jeopardize the surety. So, even if the security was received after the suretyship relation started the rule would be the same.

Juris Joint Land

6. Joseph Hout died on Sept. 1, 1915, seized and possessed of a farm containing 350 acres. Three hundred acres of this land was situated in Clarke County, Va., while the remaining contingous fifty acres was situated in Jefferson county, W.Va. The heirs were very numerous, and the land not being susceptible of partition in kind, the Circuit Court of Clarke county directs you as special commissioner to make sale of the same. All of the parties are before the court and you accordingly sell the land pursuant to the decree. What effect will be given your deed by the courts of W.Va.?

None, as the Virginia court had no jurisdiction over the West Va. land. Partition suits are actions in rem and in all such action the court must have jurisdiction of the subject matter of the action. Note: However, that a court might, on a proper occasion, order X to make out a deed of land in another State to Y, and if X refused to do so punish him for contempt of court. But in such a case X does not get his power to convey from the court--the court only ordered him to exercise a power he already had.

Partition in Equity may not be substituted for Ejectment

7. Assume for the purpose of this question that all the foregoing land is situated in Clarke County,Va. James Moore files his petition in the foregoing partition suit, claiming to be the owner in fee simple of the entire tract of land, basing his claim upon a deed which he obtained July 15,1890. None of the parties in interest object to the filing of the petition and after numerous depositions the cause by consent of parties is fixed for hearing upon the merits before the judge in vacation who enters a decree dismissing the petition for want of jurisdiction. Discuss whether or not such a decree is erroreous, giving your reasons.

The decree is not erroneous. James Moore, if his claim is sound, has an adequate remedy at law, viz ,motion for judgment in ejectment. Note: By V#8-690 a court of equity in a partition suit may take cognizance of all questions of law affecting the legal title that may arise in the proceedings. Minor on Real Property says Vol.2, p. 1137(2nd Ed.) "Under this statute no more than at common law, is it contemplated to make a suit for partition a substitute for an action of ejectment" where the plaintiff asserts an independent and hostile claim.

Bill to Quiet Title

8. In what circumstances will a court of equity entertain a bill to quiet the title to real estate by removing the clouds therefrom?

Before 1912 a party had to be in possession and have the legal title in order to maintain such a bill, but V#55-153 provides that where a bill in equity is filed to remove a cloud on the title to real estate, relief shall not be denied the complainant because he has only equitable title thereto,and is out of possession, but the court shall grant to the complainant such relief as he would be entitled to if he held the legal title and was in possession. In general, if some deed or encumbrance is in existence which might apparently affect complainant's title but which ought not to be in existence complainant can maintain a bill to quiet title(bill quia timet). Example: X gets title by adverse possession. Y, the former owner deeds the land to Z who records it. X may bring a bill quia timet for the cancellation of the deed,and the decree will show that his title is ahead of all parties defendant.

9. What is the general rule as to the liability of a trustee for the acts of his co-trustee in the administration of a trust?

Unless a joint bond was given each trustee would be liable only for his own defaults.

Specific Performance

10. What is the doctrine as to a court of equity decreeing the specific performance of contracts concerning chattels?

Specific performance will not be enforced unless the chattel is unique so that money damages would not be adequate. Note(1)Specific performance will not be granted of personal service contracts-but sometimes(if the contract so provides)a party will be enjoined from working for others when he should be working for the complainant if the services are unique. Note(2)Specific performance will not be decreed where it would be necessary to extensively supervise the work ordered to be performed.

Estoppel

11. What is an estoppel and two prominent instances thereof?

Estoppel is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled(a)by acts of judicial officers or(b)by act of the party himself. An example of the former(or estoppel by record)is as follows: X claims as an heir of A through A's wife. The records show that A's marriage was annulled. X is estopped from showing that the records are wrong in a matter collateral to that issue. An example of the latter is an estoppel by deed. X deeds land to Y which he does not own. Later X acquires the title. He is estopped from claiming the land as his own as against Y. Again, a tenant is estopped from claiming the land as his own as against his landlord.

12. B, a widow, is entitled to a fee simple estate in a farm worth $10,000,but-an attorney erroneously advises her and her son(an adult),that she had only a life estate therein,and that the son is entitled to the remainder. Acting upon this advice, which both mother and son believe to be true, the son offered the mother $1,500 for her interest and she made a deed conveying to him "all of her right, title and interest in said property." Upon discovering that she had been improperly advised as to the quantity of her interest in the property B wishes to set aside the deed, but her son contends that by said deed she has conveyed to him her entire interest in the property even though that interest was really much greater than either of them know at the time of the conveyance. What are the respective rights of the parties?

It is frequently said that equity will relieve against a mutual mistake of fact,but not at law. For the purposes of this rule foreign law is regarded as a fact. But the results of this rule are so inequitable that courts have frittered it away to a great extent by exceptions. This mistake as to title is said to be a mistake of fact and the error of law which caused the mistake a preliminary matter. Quoting 21 C.J.95 "In other cases, a distinction between ignorance or mistake as to a general rule of law prescribing conduct and establishing rights and duties, and one as to the private right or interest of a party under a written instrument, has been drawn--one of the latter kind shared by both parties to an agreement and resulting in a loss of the rights by one of them, may be set aside at the suit of the injured party,although, no fraud was practiced upon him." See also 108 Va.51,60 S.E.736. Thus the mother, on offering to return the $1500 could have the deed set aside. Note: Where the parties stand in a fiduciary relation the fiduciary can not take advantage of a mistake of law as against his beneficiary.

Multifarious Bill?

13. William Smith executed a deed conveying an undivided one-half interest in his farm to his daughter,B, and the other one-half interest in equal shares to his other children,C,D and E. Shortly thereafter he died intestate. Thereupon C,D and E unite in a partition suit, to which B is made party defendant, alleging that their father was of unsound mind when said deed was executed and that it is therefor void and praying that said deed may be set aside and the said property be partitioned equally between all of his said children. Can the validity of this deed by thus determined in the partition suit, and reason?

Here we have the same issues and the same parties. Hence the bill is not mulifarious. Equity has jurisdiction to cancel deeds and over partition suits, and having the matter before it, it will grant complete relief in one action where it has all proper parties before it.

Relief on gd. of Mistake

14. When will equity give relief on the ground of mistake?

Equity will reform an instrument where there has been a clerical error, in order to give effect to the real intention of the parties. It will cancel an instrument where the parties would not have "agreed" but for a mutual mistake of fact. If only one party has been mistaken and the mistake was a non-negligent one, and it is still possible to put the other party back in statu qui, equity will grant relief, but not otherwise where only one party was mistaken. As to relief for mistake of law see Q.12.

15.Apply to a concrete case, the maxim,["In pari delicto melior est conditio defendentis."]

X and Y are partners in the bottleg business.X keeps all the money. Y brings a bill in equity for an accounting.Note that the maxim does not apply(a)In the case of a disloyal agent where the agent's act is not per se unlawful as in collection of bottleg debts(b)Where the statute is passed for the benefit of a class to which plaintiff belongs as the borrower in usury cases or the loser in gambling cases.

Conflicting Maxims in equity

16. A assigns a non-negotiable cause of action to B and then to C without notice to the latter of the previous transfer,at a time when assignments were not recog-

mized at common law. C subsequently acquires the legal title. Which has the better right?Why? Here two maxims of equity conflict(a)"Where the equities are equal the one prior in time shall prevail"(b)Where the equities are equal he who has legal title shall prevail. In this case C would prevail. His diligence in acquiring the legal title would overcome B's priority in time.

Void J/

17. A obtains a judgment against B under such circumstances of fraud that it is void as to B. He sells and assigns the judgment to C,who is ignorant of the fraud. C proceeds on it against B. Advise B what to do.

Since judgments are non-negotiable B may set up any defense against C that he has against A. If the judgment had apparent efficicy B could enjoin the enforcement.

18. Does equity give any new right?

In theory, no. The creation of rights is for the legislature. Equity merely provides remedies for violation of rights for which the common law by reason of its universality and inflexibility does not provides an adequate remedy.

19. In what cases has a court of equity jurisdiction where the remedy at law is full and complete?

If a court of equity once gave relief because there was not an adequate remedy at law it will continue to give relief even if the law courts later give an adequate remedy.This principle may be remembered by the floowing analogy. If a turtle grabs your finger it will not let go until it thunders. If a court of equity grabs jurisdiction it will not let go until the legislature thunders,i.e. passes a statute depriving equity of jurisdiction.

Equitable Title

20. N, in the year 1880,gives his son,C.H. a tract of land, but makes him no deed to it. C.H. is put in possession at the time of the gift,and thereafter places valuable improvements on the land and exercises exclusive ownership over it until his father's death; what right did he have to said tract of land?

By V#55-2 parol gifts of land,to be valid,must be evidenced by writing. Otherwise no title passes,either legal or equitable. V#55-2 effective in 1988,changed the rule which held that under such facts an equitable title passed. Note that V#55-2 does not apply to gifts evidenced by writing or to oral contracts where there is sufficient part performance to take them out of the statute of frauds in equity.

21. N, in the year,1890, gives to his son,F.L.,a tract of land,but makes him no deed to it; F.L. is put in possession at the time of the gift, and thereafter makes valuable improvements on it, and exercises exclusive ownership over it until his father's death. What right did F.L. have to said tract of land? See above.

Rule - Distribution of funds arising Bond holders

22. A sells to B a lot of land for $10,000,receiving $2,000 in cash and four bonds for $2,000 each, payable in one,two,three and four years respectively. A conveys B the land, reserving a vendor's lien to secure the unpaid purchase money evidenced by the four bonds; A then assigns to C for value the bond payable at four years;subsequently A assigns to D the bond payable at three years. B makes default in paying all of the bonds; and suit is brought to enforce the vendor's lien. The land when sold brings only $3,000,owing to destruction of improvements thereon. How will the fund be distributed between the several holders of the bonds?

There are three possible solutions(a)Equally among the bondholders.(b)According to the maturity of the bonds(c)In the order of assignment. The common law rule in Virginia was in the order of assignment on the theory that when one assigned one bond he also assigned sufficient security to secure same. This rule has not worked well in practice because it is often hard to tell the dates of assignments or even to locate bonds that may have been assigned. So the above rule has been changed by statute(V48-65, passed in 1934)in favor of equality unless the instrument provides otherwise. Of course this statute has no retroactive effect and assignments made before the change took effect are governed by the old rule

23. When, if at all, will a court of equity decree the specific performance of a parol contract for the sale of land?

(1)Where contract has been partly performed, and complainant has changed his position in reliance thereon.It is universally held that mere payment of the purchase price is not sufficient part performance, but if one goes into possession and makes valuable improvements this is a sufficient part performance and change of position. The theory is that such acts constitute as strong evidence of a contract as does a writing.(2) Where answer confesses the contract, or the agreement is later evidenced by a writing by the party to be charged.

Quantum Meruit

24. A verbally agreed with B to pay him $30 per month for his services,and it was further understood that B should have conveyed to him at the end of the year certain land belonging to A at the rate of $25 per acre,in settlement for his services.At the end of the year B demanded deed for the land to the extent of services rendered,which A declined to give him. What redress had B upon the contract?

B cannot get the land because of the statute of frauds. Working for another is not per se evidence equivalent to a writing that he is to be paid partly in land. B's only remedy on the contract is suit for the $30,if that has not been paid.The best thing for B to do is to ignore the express contract and sue on a quantum meruit on a contract implied in law.

Defenses to S/P for Sale of Land

25.State three possible defenses which might be interposed by a vendee in a suit for specific performance of a contract for a sale of land brought by a vendor against him?

Fraud,mutual mistake of fact,failure of consideration,infancy,statute of frauds, extreme hardship,defective title,etc.

Elements Equitable Estoppel

26.Give the essential elements of equitable estoppel.

(1)The party estopped has made a certain representation by words or acts(2)When he knew or was under a duty to know the true state of facts(3)With the intent that plaintiff rely thereon(4)Plaintiff was ignorant of the true state of facts(5)Did rely on the representations(6)To his injury.

Rts. of Authors of Private Letters

27. What are the rights of authors of letters of a private nature, and how may such rights be protected in case of threatened invasion?

The addressor has a right that they be not disclosed to others.The physical letter belongs to the addressee but the contents thereofbelong to the addressor,who may protect himself by an injunction upon a proper showing,i.e.,that irreparable injury result if the threatened disclosures were made.

Equitable Mortgage

28.A debtor conveys a retail stock of goods to a trustee to secure a debt of $10,000 due three years after the date of the deed, the deed providing that the debtor may remain in possession and sell the goods in the ordinary course of business and replenish with new goods until the debt falls due whereupon if not paid,the trustee may take possession,convert the goods into cash and pay the debt,and any surplus to the grantor.Is the deed valid or not? Why?

As between the parties this would constitute a valid equitable mortgage on the new goods as purchased. But as between other creditors the deed would be void. It allows the grantor to do all acts consistent with absolute ownership. This would probably be conclusive evidence of fraud so far as other creditors are concerned, and hence would render the deed void as to them.

Constructive & Resulting Trusts

29. Define a constructive and resulting trust,with an illustration of each,and state what kind of evidence is necessary to establish? Implied trusts are of two sorts, constructive(or fraud rectifying),and resulting(or intent enforcing). An example of a resulting trust is as follows: X buys Blackacre with his own funds but has the deed made out to Y. Y would hold as trust for X, as, from these facts such an intent would be inferred, if Y were a stranger. An example of a constructive trust: X by will leaves his property to Y. Y kills X

to get the property. In the absence of any statute on the matter he holds it as trustee. Implied trusts must be established by evidence that is clear and convincing since one is attempting to prove by parol facts which change the course of the title. Note that in these cases the statute of frauds has no application as the change in title takes place by operation of law and not by act of the parties.

Maxims of Equity

30. Give four of the principal maxims of equity.

(1)"Equity follows the law." Example: Statute requires two witnesses to a will. This is true in equity also. (2)"Where the equities are equal the law will prevail." Example: A contracts to sell land to B. Later he contracts to sell to C who has no notice of the prior contract. Later A deeds the land to C. C is ahead of B. (3)"Equity treats that as done which ought to be done." Example: A contracts to sell land to B, but before the deed is made out A dies. Equity will treat the land as B's real estate and as A's personal property. (4)"Equality is equity." Example: One of three joint sureties is forced to pay the whole debt. He may recover from each solvent surety his pro-rata share. (5)"He who seeks equity must do equity." Example: X, who has been paid $1,000 on a $10,000 contract wants it rescinded for mutual mistake of fact. He must offer to return the $1,000. (6)"He who comes into equity must do so with clean hands." Example: B, who has been guilty of adultery seeks a divorce from his wife for her adultery. (7)"Where the equities are equal the one prior in time will prevail." Example: A contracts to sell land to B. Later he contracts to sell to C. B has the better right on the bare facts stated.

Enjoin a trespass

31. When, if at all, will a court of equity enjoin a trespass?

When complainant has undisputed right of possession and the nature of the threatened injury would be of an irreparable character as where the defendant is insolvent, or the trespass is repeated or continuous.

Subrogation

32. A steals from B a sum of money consisting of coin and U.S. currency. A used the identical coin and currency so stolen from B to pay off a debt due by him to C, which debt is secured by deed of trust on A's real estate. C receives the money in payment of his debt secured by deed of trust on A's realty not knowing that it was stolen. Is B whose money was used to pay off the debt of C so secured by deed of trust, subrogated to C's rights under the deed of trust?

Yes. It is not necessary that there be any privity between the parties to allow subrogation. Since money is negotiable C is protected as payment of a preexisting debt is considered a payment for value. C has no more use for his security, and since the money can be traced the other creditors of A will be no worse off.

Equitable Conversion Doctrine

33. State the doctrine of equitable conversion. Under the maxims "Equity regards that as done which ought to be done" and "Equity looks to the substance rather than to the form" equity will regard realty as personalty or vice versa when the circumstances are such that justice is best served thereby.

Riparian Rights

34. A proprietor of a saw-mill on a stream threw saw-dust into the stream. The saw-dust discolored the water and gave it an offensive odor. Live stock, in some instances refused to drink the water, and it was rendered less fit for domestic purposes. Is such a use of the stream a violation of the rights of a lower riparian proprietor? If so, why and why remedy has he? Yes. A lower riparian owner has a "natural right" to receive the flow of the stream substantially without pollution and in volume undiminished except by domestic use. The law will not permit one party to use a watercourse in such a way as to deprive others of their equal right so to use it. Remedy is an injunction or an action on the case for damages. Money damages would ordinarily not be adequate since repeated actions would have to be brought.

Gratuitous Promise to Buy

35. A gratuitously agrees to purchase a tract of land for B, but purchases on his own account. Can A hold the land against B?

If this question means he agreed gratuitously to act as an agent for B in the purchase of the land, A could not hold the land as against B, as an agent owes a duty of loyalty, and it is immaterial that he agreed to do it for nothing. If however, it means, that A agreed to use his own money, buy the land and make a gift of it to B then the promise is unenforceable because there would be no consideration to support it.

Church Endowment

36. Your client wishes to leave $30,000 as a permanent endowment for the Monumental Episcopal Church in Richmond. Can he do so? If so, how?

By V#57-12 churches may hold real estate up to four acres in a city or 75 acres in the country, and personal property up to $2,000,000 exclusive of books and furniture. Churches are not incorporated in Va. so the money should be left by deed or will to the trustees of the Church. Note: Charitable trusts are valid in Va.today. The old statute of Elizabeth which was supposed to have made charitable trusts valid in England was repealed in Va. in 1792 but various acts since that time have again validated them. See V#55-26.

Statute of Limitations in Equity

37. How far does a statute of limitations affect an equity court?

(1)When jurisdiction of equity and law are concurrent equity follows the law.(2) When equitable right bears an analogy to a legal right the legal statute will be applied.(3) When there is little or no analogy equity has no hard and fast statute of limitations but applies its own doctrine of laches.(4)When jurisdiction arises by a statute which lays down a period equity is bound by the statutory period. Read Lile's Notes on Equity Jurisprudence, pp.20-21.

Judicial Sale - Inadequate Price

38. When will equity refuse to confirm a judicial sale for inadequacy of price?

When the price is grossly inadequate, or another bid is substantially greater provided the upset bidder gives good reason why he did not appear at regular sale. The first bidder must be given an opportunity to meet the upset bid.

Mistake of law

39. A party compromises a debt at a ruinous discount, under the impression that it is barred by the three year statute of limitations. He afterwards finds that the case is governed by the five year statute and is not barred. He files a bill to rescind the compromise on the ground of mistake. Will the bill lie? Why?

This is a pure mistake of law about a general proposition of law, and the court will not grant relief for such a mistake of law since opportunity to know the law is equally open to all parties.

Trust Estate

40. What is a trust estate? Land is conveyed to A and the consideration paid by B. When will a trust be implied in favor of B and when not?

A trust estate is an interest created by the settlor of the interest,(grantor of a deed of trust or devisor of a will)the legal title to which is in a trustee but the beneficial interest is in a cestui que trust or beneficiary. Note the three elements (1)trust res(2)trustee(3)beneficiary. If the trust res is destroyed so that it cannot be traced the trust ceases, and if this destruction is due to the fault of the truste it is turned into a debt. If A is a stranger to whom B owes no duty legal or moral, a resulting trust would be implied. If A is a wife or minor child a gift is presumed.

Subrogation

41. What is meant by the term "subrogation?" Is it a legal or an equitable right,and in whose favor may the right be enforced? A leaves goods with B, a warehouseman,and the latter agrees to keep the property insured for A;A, however, not relying on B, takes out insurance on the goods himself. B fails to keep his agreement to insure.The property is burned under such circumstances as to relieve B from any common law liability for its loss. A, not caring to go against B on the latter's contract,collects his insurance. The insurance company claims that it is subrogated to the benefit of A's contract with B. Can the company prevail?

Where one person has paid the debt of another under circumstances that make such payment not a voluntary one or to relieve his own property from some prior incumbrance, he is entitled in equity to succeed to all the securities and rights held by the creditor for the payment of his debt provided these rights are superior to

his own and the creditor has no further use for them. 26 C.J.458,#620 is as follows, "The right of subrogation is not limited to cases where the liability of the third person is founded in tort; but any right of the insured to indemnity will pass to the insurer on payment of the loss." Moreover the last clause of the Standard Fire Insurance policy reads, "This Company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment thereof is made by this company."

Specific Performance

42. Discuss the doctrine as to specific performance of contracts for sale of real estate. How about specific performance of contract for personal services, and what relief can be given in such cases by the courts?

General rule is that every tract of land is unique and hence specific performance will be granted. See Q.25 as to defenses. Also add lack of mutuality of security, e.g. a court will not specifically enforce a contract by an adult to sell land to an infant. Strange as it seems the vendor can also get specific performance for the purchase price. This is explained either by saying that since the vendee has the right of specific performance mutuality requires that the vendor have it too, or by saying that since land is unique one has a right to get rid of the land just as much as he acquire it. See answer to question 10 note(1).

Deed of Trust

43. A executes a deed of trust on his land to secure the payment of a debt due B. Afterwards A sells and conveys a portion of same land to C and subsequently conveys another portion to D. Before purchasing, D gets B to release that portion of the land purchased by him(D)from the lien of the deed of trust. All the deeds were properly recorded. The proceeds of the residue of the trust lands are not sufficient to pay B's debt. Can B enforce his deed of trust upon the lands purchased by C,having released the lands subsequently purchased by D. Give reasons for your answer.

If B knew that in releasing D he was making C liable to a greater extent C would be released pro tanto as no man ought to be able to knowingly release one primarily liable and still hold one secondarily liable. But if B knew nothing of C and supposed that A,D, and himself were the only parties interested C ought to stand in A's shoes and he would not be released.(1)Does the recordation of A's deed to C give D that notice? No, because a mortgagee who has recorded is not under any duty to consult records subsequent to his own.(2) In Virginia by statute possession of the land by another does not put a person on inquiry to determine the possessor's title. So that, unless B had actual notice that C was liable for the debt after D, he could enforce his deed of trust against the land purchased by C.

EQUITY 1300. 184 S.E.175.

X operated a beer garden some 40 feet beyond low water mark of the Potomac off the shore occupied by the town of Colonial Beach. The town sought to enjoin the operation of the business, an ordiance having been passed making it illegal. X had the consent of the war department for the erection of the structure in the navigable waters of the U.S.

Held: (1) Equity will not restrain an act merely because it is in violation of a town ordinance or criminal statute.

(2) Equity will enjoin violation of criminal law where commission of act will result in special and irreparable injury to property rights.

(3) No proof that the structure and operation of the business was a nuisance.

(4) Unnecessary to consider the question as to whether Maryland or Virginia has jurisdiction.

EQUITY Equity will give full & complete relief 186 S.E.33 at p.35

Where some phase of the case alleged in a bill in chancery presents a good ground for equitable relief, and the court has acquired actual jurisdiction of all the parties or of the res necessary for the granting of some of the equitable releif to which the allegations of the bill entitle the complainant, a court of chancery may go on to complete adjudication of the cause even to the extent of establishing legal rights and administering legal remedies, which would otherwise be beyond the scope of its authority. But generally speaking in such a case, it will not send the parties back to a court of law, but will retain jurisdiction for all purposes, and do complete justice between the parties. This is true even where the proof may show that the complainant is not entitled to the equitable relief prayed, or that subsequent to the filing of the bill need for equitable relief has ceased to exist.

EQUITY Elements for Taking oral promise out of S/F in Equity 186 S.E.71.

X claims that his father orally promised to devise him a half interest in land in return for advances made by X to his father. After his father's death X took possession of the land and made some improvements thereon. The land was actually devised to X's sister.

(a) Can X prove his case without corroboration?

(b) Would the promise be taken out of the statute of frauds in equity?

(c) If X has to give up the land can he set off the improvements he made against the rent he owes his sister?

(a) V#-239 prevents a recovery on X's uncorroborated testimony.

(b) Not unless: (1) Parol agreement is certain and definite. (2) Acts proved in part performance refer to, result from, or were made in pursuance of, agreement proved. (3) Agreement has been so far executed that refusal of full execution would result in irreparable fraud to party seeking relief. (Some, if not all, of these elements are missing). (Learn these elements as they have been stated over and over again).

(c) Since X is not a bona fide purchaser and since he has constructive notice of his defective title the Virginia statutes allowing recovery for improvements do not apply, our betterment act applying only when party in possession reasonably supposes he owns the land.

EQUITY Admin. of Estate 189 S.E.315.

X made a deed of trust of realty to the Y Bank to secure a $50,000 note. Later X deeded the entire realty to the Bank on certain trusts for some of his children. This last deed gave the Bank the power to sell as much of the property as might be necessary to pay any indebtedness against the realty. Later X died. Should X's executor pay off the $50,000 note or should the Bank sell some of the realty to pay off the debt? Residuary legatee interested.

Held: Personal property at large is primary fund. Unless land is charged expressly or by clear implication land is not taken before personalty. $50,000 note merely a secured debt, and a secured debt is a debt just as much as an unsecured debt.

EQUITY 1901. 192 S.E.737.

D contracted in writing to sell to P "Duggan's Inn", terms $500 down, note for $5,500 payable 3 years after date, with privilege of renewal, for the balance. The $5,500 note was given but said nothing about a renewal.

Declaims the contract is void for uncertainty, (a) In the description of the property, and (b) as to the time of payment of the $5,500 note. Discuss.

(a) Since "Duggan's Inn" was the only property owned by the vendors in that county, and the parties meant the whole of the property and there was no dispute as to the boundaries thereof the description is sufficiently definite.

(b)(1) "Privilege of renewal" means one renewal only, and hence it sufficiently definite.

(2) Since this provision was for the sole benefit of vendee he could waive it, and when he gave a note which said nothing about the renewal privilege he did waive it, so P, the vendee is entitled to specific performance.

EQUITY Judicial Sale 193 S.E.489.

At a mortgage foreclosure sale the property was sold to X for $10,000. A little while later Y entered and upset bid for $11,000, alleging that $10,000 was an inadequate amount and that he forgot about attending the sale. The trial court ordered that the biddings be re-opened. Was this proper?

Held: That $10,000 bid should have been confirmed. A judicial sale, regularly made in manner prescribed by law on due notice without fraud, unfairness, surprise or mistake will not generally be set aside or refused confirmation because of mere inadequacy of price unless so gross as to shock the conscience and raise presumption of fraud, unfairness, or mistake.

An upset bid of only 10% more where there was no good reason why upset bidder did not attend sale should not result in a re-opening of the biddings.

EQUITY Equity Jurisdiction in Estate Settlement 193 S.E.689.

Deceased died insolvent and D qualified as administratrix. Deceased owed P a sum of money. P, without attempting to prove his debt in the probate proceedings filed a creditor's bill in which he demanded that the assets be collected and paid properly to the creditors. D demurred to the bill. Result? Demurrer sustained (2 judges dissenting). In the absence of statute courts of equity have jurisdiction over the settlement of estates, but in Virginia where a probate court had already acquired jurisdiction of estate as the result of statutory provisions no suit in equity would lie in the absence of an allegation of independent equities, i.e., where equity had jurisdiction for some other reason than the winding up of the estate. Otherwise there could be great confusion in cases of this sort.

EQUITY Doctrine of Tulk v. Moxhay 2 S.E.2d 355.

D owned land in a sub-division, one of the provisions of the dedication of same being that no building should be nearer than 10 feet to the street line. Later a zoning law was passed and the property was zoned "business". So D built a store within 6 feet of the street line. Complainant sought a mandatory injunction to compel the removal of the store. Defenses.

(a) Zoning law superseded the dedication.

(b) Even if it did not there was an adequate remedy at law.

(c) A court of equity should not inflict a loss of D out of all proportion to any gain on part of P.

Held: Here there was a valid equitable servitude which will be enforced in equity in favor of any person for whose benefit it was created. This is the doctrine of Tulk v. Moxhay (learn, an English Case). A zoning ordinance cannot deprive one of already existing vested rights. It was D's own folly to violate the restriction and money damages are not adequate. In 124 Va.711, 98 S.E.638 the court decreed the removal of a warehouse, a storehouse, a shed and a cotton gin.

No orig. Juris in equity to hear contested election cases

Does a court of equity in the absence of a statute have inherent, original jurisdiction to hear and decide contested election cases?

Held: No.(Majority rule). The right to contest elections is purely statutory. If no such right is given, the certificate of the judges of election is final. If however, it appears on the face of the proceedings that the election is void it is the same as no election.

EQUITY Subrogation Denied here 3 S.E.2d 395.

Surety was forced to pay a judgment in Tenn. against it and P. Is the Surety entitled to subrogation in Virginia?

Held: Until Surety gets a Virginia judgment he is only a general creditor in Va. He has nothing to gain by standing in the creditor's shoes since has had just as great a right in his own right on the implied contract of re-imbursement. One of the conditions of subrogation is that the person subrogated will stand in a better position as a result of subrogation. Since the Tenn. judgment is not per se a lien on P. D's land in Va. nothing will be gained by standing in Creditor's shoes and hence subrogation will be denied.

Note: Code-3[illegible] provides that proceedings to enforce subrogation must be instituted within five years after the right accrues.

EQUITY Equity Juris to enforce Annuity Payments 6 S.E.2d 612,619.

Has equity jurisdiction to enforce the payment of annuities?(In this case promise by deserting husband to pay his wife and children an agreed sum every month)

Held: Yes. If law courts alone can give relief there would be a possibility of endless suits. In the meantime the children might be getting nothing though desperately in need of funds. This was decided as far back as 16 Va.412 some 100 yrs. ago. "Not only may resort be had to a suit in equity for the collection of arrears of annuity, but there should be reserved liberty to apply to the chancellor for relief to cover payments thereafter falling due.

EQUITY S/F of Oral K — Taken out of S/F 7 S.E.2d 147.

Decedent orally told P that if she would take care of him the rest of his life that he would will her his farm. This P did. Decedent lived for one year all of which time he was a helpless invalid requiring tender,personal,24 hours a day service much of which was exceedingly distasteful. Decedent died intestate. Is P entitled to the farm or to only a recovery quantum meruit?

Held: Since (1) the parol agreement was certain and definite, and (2) the acts proven in performance resulted from the agreement, and (3) a refusal of the execution in full of the agreement would operate a fraud on P and place her in a position such that money damages only would be inadequate(since services were hard to measure in money and were not done for money), the agreement is taken out of the statute of frauds in equity, and specific performance is granted.

EQUITY Equitable Charge on Land 10 S.E. 2d 484.

T devised land to G. He directed in his will that G pay X $1,000. He did not expressly charge the devised land with the payment of the legacy.

G sold the land to H. Later G received a discharge in bankruptcy from all his debts including his $1,000 debt to X. Fifteen years after the death of T and 12 years after the time of final settlement of the estate X sought to collect her $1,000. Can she do so? Held:(1)There is no personal liability on G because of his discharge in bankruptcy.(2)There was,however, in ecuity an equitable charge on the land. E en if the land was not expressly charged it was impliedly charged. The discharge in bankruptcy did not affect this charge. H had constructive notice of this charge so he is not a b.f.p.

(3) Laches is not a defense. The sum to be paid was certain in amount; no witnesses have died, no evidence has been lost; the transaction has not become obscure. There would be an unjust forfeiture if more delay barred the suit.

EQUITY Juris. 1303. 20 S.E.2d 881.

The C & O Ry.Co. mistakenly thought it had concluded a contract with P for the purchase of a quarry. The "contract" provided that C & O could enter the land at once and remove rock. P refused to deed the land to the C&O on the ground that there was no valid contract. The C&O entered the land and took away rock, and also filed a bill in equity for specific performance of the contract. The court held there was no contract, and referred the question of the amount due P for stone removed to a commissioner in Chancery. Was this latter the proper procedure?

Held: No. If there was no contract then a court of equity had no jurisdiction over the case and P's remedy at law is full and complete. Hence the case should have been transferred to the law side of the court where a jury could determine the amount due. 3 judges dissented without stating their reasons which I assume to be that if equity takes the case it will give complete relief although legal remedies are involved even if it decides that a supposed equitable right or remedy does not actually exist.

EQUITY Power to pass title

P sued D on a negotiable promissory note which D had executed, payable to A, and which A had assigned to P after its maturity. D's answer alleged that, before the assignment of the note, A had been enjoined from transferring any of his property. P demurred to the answer. What ruling?

The assignment, even though after maturity, passes title from A to P. Assuming that P was a bona fide purchaser for value equity will protect him. A is, of course, guilty of contempt of court, but he still had the power to pass a perfect title to a b.f.p.

EQUITY Standing to ask for a receivership

The XYZ Railroad, operating a street passenger railroad in one of the cities of this State, was heavily indebted to Smith. Smith became convinced that the directors of the road were not managing it honestly in its own interest, but rather in the personal interest of two named stockholders, who owned a majority of its stock and thereby controlled its affairs. Fearing that, unless the company's policy was changed, it might become insolvent, and that he might not be able to collect from it what was due him, he filed his bill in one of the circuit courts of the State alleging the above facts, and praying for the appointment of a receiver. He further alleged that he had made no request of the directors to correct the wrongs which they had committed and were still committing in the interest of the two stockholders named, because it would be useless to do so. He brought the suit for the benefit of himself, a general creditor, and all other creditors of the company similarly situated, and made the company, its directors and the two stockholders named, parties defendant. The defendants demurred to the bill. Should the demurrer have been sustained?

Yes, the demurrer should be sustained, for Smith nowhere alleges that he is a judgment creditor or a lien creditor. Unless he is such a creditor he has no standing in court to ask for a receivership. 53 C.J.29; Lile #472.

EQUITY Subrogation 179 Va.384.

X, and his mother, M, owned Blackacre. M conveyed her interest to X in return for which X promised to pay M an annuity of $700 per year, and the deed expressly stated that the whole of Blackacre was subject to a lien to secure the payment thereof. X later borrowed $16,000 from A and executed a deed of trust to A to secure said sum. M joined in this deed of trust for the sole purpose of subordinating her annuity lien to A's rights. Later X borrowed $19,000 from F with the understanding that F would discharge X's obligation to A and back taxes which F did. F meant to get M to join in the mortgage which X gave F to secure him, and which contained a covenant against incumbrances, but by oversight neglected to ask M to do so. In 1938 X secured a discharge in bankruptcy. In 1940 M died. In her will she left the $7,000 past due ... annuities X owed her to X for X's life, free from the rights of his creditors, remainder to Y in fee. What are F's rights?

Held:(two judges dissenting)F is subrogated to A's rights and hence has priority over X. Subrogation is an equitable remedy and no where applied more liberally than in Va. F's oversight or negligence injured no one. It would be inequitable to allow X to enjoy the $7,000 interest of his mother in the teeth of his violated covenant against encumbrances. The remainderman is a mere volunteer while F is a creditor for value. Note: The court said there were two kinds of subrogation, legal subrogation arising by operation of law in equity, and conventional subrogation as the result of agreement. In the instant case we have legal subrogation imposed by equity to prevent injustice.

EQUITY Rule - Lost Instruments 179 Va.604.

Part 1. P was afraid X would obtain a judgment against him and sell his home to satisfy same, so P conveyed his home to his daughter,D, and her husband for a fictitious consideration upon their promise to reconvey on demand. X only obtained a small judgment which P paid at once. P at all times occupied the home. The daughter refused to reconvey and P filed this bill in equity to force her to do so. Result?

Held: The transaction was conceived in fraud. The payment of X's judgment did not relieve the conveyance of its fraudulent character. He who comes into equity must do so with clean hands. Part 2. P claimed that his son-in-law had given him a deed which was destroyed. State the rule with respect to proof of lost or destroyed instruments. "Where the instrument rises to the dignity and importance of a muniment of title, every principle of public policy demands that the proof of its former existence, its loss, and its contents, should be strong and conclusive." While equity has jurisdiction it is a dangerous jurisdiction, and, "so pregnant with opportunities for fraud and injustice that it will not be lightly exercised, nor except upon the clearest and most stringent proof."

EQUITY Insurance-Reformation Reformation 181 Va.561.

P carried liability insurance on Car 1, Car 2, and Car 3, There was a separate policy on each car. The insurance on Car 1 expired on June 1; on Car 2, on August 1; on Car 3 on Sept.1. There was a ten day grace period. On June 8th X received a premium from P for all three cars. X represented the D Co., a new and different company. X promised to procure a policy for Car #1 at once, and to take care of the others as soon as they expired. X negligently got the cars mixed up and issued a policy on Car 3 instead of on Car 1. Car 1 was in an accident on July 10th. Is the D Company liable?

Held: Yes. P's personal representative is entitled to reformation in equity. Otherwise there would be a gross miscarriage of justice and the D Co. would profit by its own wrong. The evidence of mistake was clear and convincing. The fact that P's personal representative did not promptly notify the D Co. is immaterial as the delay was due to the D Co.'s. issuing a policy on the wrong car. This is a typical reformation case.

EQUITY Mistake-Abatement of Purchase Price 181 Va.771.

D sold timber to P for $20,000. P knew the boundaries, used his own method of computing the amount of timber, and asked for no warranties. X surveyed the tract and stated there were 423 acres. Later surveys showed an 18% deficiency. Is P entitled to an 18% abatement of the purchase price?

Held: No. This was a contract of hazard. P did not rely on the acreage but made his own investigation. The general rule that a contract will be presumed to be by the acre rather than a contract of hazard by the tract is not applicable to sales of timber where there is no warranty of acreage and where the purchaser buys the timber on land with known boundaries and makes or can make his own investigation, the results of which he does not disclose to the seller.

EQUITY Specific Performance 183 Va.42.

T failed to pay his rent and L had the sheriff levy a distress on some coal owned by T. The sheriff at the sale sold the coal to M for $5,100 on four days credit. M kept putting the sheriff off and after several weeks the sheriff resold to L. In the meantime M assigned his rights to G who tendered $5,100, and the tender was refused.

L bought with knowledge of G's claim of ownership. Due to the war the culm coal had a greater value than usual. G filed a bill in equity against the sheriff and L, alleging that he was entitled to specific performance of the contract made when the coal was knocked down to M by the sheriff. Is He?

No. He is not. Detinue is an adequate legal remedy if title to coal passed. If it ha not passed then a court of equity will not give specific performance to a contract to sell personal property unless it is unique. There is nothing unique about culm coal. The mere fact that it has increased in value on account of war conditions does not make it unique. Besides a plaintiff who wants specific performance must show that he has always been willing, able and anxious to do his part. M(who was G's assignor)was nbt able and anxious. He trifled and speculated on delay. When prices increased he then became anxious. Such a one is not entitled to the discretionary remedy of specifi performance.

EQUITY Recission 183 Va.202,226.

P deeded property to C, and later made a warranty deed of the same property to X. P filed a bill in equity to cancel and rescind the first deed for fraud. C urged that since P had already sold the property to X he, P, had no interest that would support his bill. Held: Contention unsound. Since P would be liable on his warranty to X if the deed to C was valid he has a sufficient interest to maintain his bill.

EQUITY Clean Hands 183 Va.722.

(a)Thad a judgment against X and one against Y. X bought some real property and had the title taken in S's name to defraud T. Later X paid T. Is X entitled to regain the property from S?

Held:No. The conveyance was made in fraud of creditors and hence X cannot come into equity with clean hands. It is immaterial that he afterwards paid his creditor.

(b)T had a judgment against X and one against Y. X bought real property and had the title taken in S's name to defraud creditors on the advise of Y. Before X paid off the creditors S conveyed to X who did not redord. After X paid off the creditors S conveyed to Y who know the facts. Has X or Y the better title?

Held: Y was just as guilty as X in attempting to delay or defraud creditors. The "Clean hands" doctrine will not be applied to reach an unjust result. Since X bought the land with his own money, and has paid off the creditors and has a prior deed of which Y had notice X's rights are superior.

EQUITY Grounds for Abating Nuisance 185 Va.13.

D kept two female dogs tied on a clothes line. They had much company and there was a great deal of barking and howling night after night so that P was unable to sleep. P sought a mandatory injunction ordering D to stop keeping noisy dogs.

Held: Injunction granted. The noise was a nuisance and D should so use his own land as not to injure his neighbor's.

Note:If the noise of a nuisance would not bother a normal person, but would bother a sick person the injunction should not be granted as the use of ones own land should not be restricted because of the abnormal sensibilities of others. But the mere fact that one is unwell does not turn a neighbor loose to add to the sick person's discomfort by doing acts that would annoy a normal person.

EQUITY Creditor's Rights Vendor's lien 185 Va.405.

X sold his business to Y by deed of bargain and sale for $3300. $500 was paid in cash and the balance was to be paid at the rate of $100 per month. No chattel mortgage or other lien was taken as security so that Y could more easily obtain credit. Y was killed and X now maintains that he has an equitable lien to secure the balance of the purchase price.

Held:No lien. A vendor's lien in Va. by V 55-58 must be expressly provided for and reserved on the face of the instrument. Equity will not establish a secret lien to the injury of creditors. For one to disclaim a lien so that credit will be given by others and then claim a lien against such others., violates the maxim that he who comes into equity must do so with clean hands.

EQUITY EQUITABLE LIENS 1306. 185 Va.586.

P worked for D on her farm over a period of years. D died five years after P had performed his last work, and four years after D's death P claimed an equitable lien for some $3,000. When D died she left an unsigned statement in her own handwriting to the effect she wanted D paid.

Held: No equitable lien. A moral obligation alone is not enough to create one. An unsigned writing does not indicate a settled intent to create one. A statement that one wants a debt paid without charging any property as security is not enough to create a lien. While D could have waived the statute of limitations her personal representative cannot. A statement in an unsigned will that D wanted P paid is a nullity and does not revive the debt.

EQUITY Specific Performance — Equitable Conversion 187 Va.169

S contracted to seel B a lot in Roanoke that was zoned business for the purpose of enabling B to engage in the cold storage business. After the contract was closed the land was re-zoned residential and the lot is worthless for the purpose desired. S sought specific performance. What decree?

Held for B. In spite of the general doctrine of equitable conversion that doctrine is a fiction that will never be employed to do injustice. The remedy of specific performance is discretionary and will be withheld in cases of mistake or great hardship. "Courts of equity will not exercise jurisdiction in specific performance where it would impose hardships on people not censurable in conduct and where the circumstances and conditions of things have been so changed as to work loss and hardship to them."

Note: The Court did not hold that the tract was or was not discharged. It merely held that no equitable relief either by way of specific performance or cancellation would be granted. It left the parties to their legal remedies only, i.e. S could sue for damages for breach of contract if the contract has not been discharged, but such a remedy would be totally inadequate as probably only nominal damages could be recovered.

Query: If S contracted to sell B a lot with a resident on it, and the residence burned would B be excused in equity? Would it make any difference that there was an acute shortage of houses and S knew B wanted the house as his personal residence?

EQUITY Restrictive Covenant 184 Va.143. 49 S.E. 2d 314.

D sold numerous lots in a subdivision called Parkview almost all of which were restricted to residential uses only until the year 1959. P in 1948 seeks a declaratory judgment that the restriction is now void because of changed conditions as follows:(1)A large zipper factory employing 300 people runs day and night just west of P's lots but not in the Parkview sub-division. (2) Route 168 has become a much travelled highway and the lots face thereon.(3)There is a shopping district and a roller skating rink nearby(4)P's lots will be worth more if available for business. (5) The property in question has been zoned business.

Held: Relief refused. P when he purchased made a contract with all other purchasers. To declare the contract void as requested would not only prevent injunctive relief by others but deprive them of their right to sue at law as well. The evidence of changed circumstances is not sufficient to show such a radical change in the whole neighborhood as to indicate that therestrictive covenants are a burden on everyone. One of the purposes of such covenants is to prevent a covenantor from using his property for business purposes because that would be more profitable. The rights of the covenantees some of whom vigorously objected to any change and who bought in reliance upon such covenants must also be considered.

Note: The court recognized the general rule that when enforcement of such a covenant as a result of changed conditions would be oppressive and unreasonable equity would refuse its aid, but held that there was not a sufficient change in the above case to justify its application.

EQUITY 1307. 53 S.E.2d 29,189 Va. 449

1. D promised in writing to convey Blackacre to Y at once in return for Y's promise to take care of D for the rest of D's life. D refused to convey. May Y get specific performance?

No, because a court of equity could not force Y to keep his part of the agreement and there would be lack of mutuality of security.

2. D told P if P would come and live with her and manage her farm for the rest of he life she would will it to her. D started life anew, carried out her part of the agreement for eight years, and made improvements on the land. Then D made a voluntary conveyance of the farm to her niece. What are P's rights?

The agreement is taken out of the statute of frauds in equity because(1)contract was certain in its terms(2)P's acts were made in reliance upon the oral contract,and(3) P has so far executed it that it would operate a fraud on her not to give her the la as money damages would not compensate her for changing her way of life and taking some one into her family. While equity will not order D to make a will(which she could change later)it will impress the land with a trust so that the Niece will hold it in trust for P. D cannot complain that the services have not yet been fully performed as she is one to blame for preventing performance.

EQUITY--Wills--Support and Maintenance 190 Va.468.

F died testate survived by W who was his widow, two sons whom we will call S and T, and two daughters whom we will call D and E. F devised the home tract to S but a clause of the will provided that W was to have her home there and to have her support from the same place and another clause contained a similar provision in favor of D as long as she remained single. D was afflicted with tuberculosis and never married. F died in 1922, S married H in 1923 after having taken possession of the home tract, and W died in 1931. H then became abusive to D and treated her as an interloper and S said he couldn't do anything about it. D was forced to leave in 1931 and made her home with E and her husband. As the years passed D became bedridden and without funds and S refused to help. Finally D filed this bill in equity in 1947 in which she sought to charge the home tract for the support of herself since 1931 and for general relief. The Chancellor not only charged the land, but also charged S personally at the rate of $200 per year. The following contentions were made:

(1) The suit is barred by the 20 years statute of limitations which prohibits the enforcement of legacies charged on land after the expiration of 20 years. Held: the action did not arise when F died in 1922 but when further support was refused in 193

(2) The suit is barred by laches. The evidence showed that D did not wish to sue her brother if there was any other way out, but after she became too sick to help herself there was no other way out. Held: This was understandable and reasonable and hence inaction by her until 1947 did not constitute laches. No one but herself was injured by the delay.

(3) That there was no personal liability here first because F's will did not provid for it and second because D only sought in her bill an equitable charge on the land. H eld: S cannot appropriate what he should have paid D for her support without being unjustly enriched and hence he will be personally liable on quasi-contractual principles. He accepted the devise with the burdens, and, having taken it, cannot divest himself of these burdens. While no such relief was especially asked for there was a prayer for general relief and the personal liability portion of the decree was permissible under that prayer.

(4) That all but the last three years of personal liability was barred by the three year statute of limitations on unwritten contracts. Held: This is correct, so the trial court's decree was modified in this respect only. Hence the home tract was still subject to an equitable charge for all the past due sums and for whatever sums might still accrue.

EQUITY Time Of Not Essence 1916. 122 Va. 763

P contracted to buy Blackacre from D in 1937 for $165. He paid $22 down and agreed to pay $10 per month thereafter until the balance was paid. After paying 62 per cent of the purchase price P became sick and D went into the Service. After D returned home and after there had been a default for some 26 months P offered D the balance and requested a deed. D said he would have to think it over, that a long time had passed, and finally refused to give a deed. The contract did not expressly make time of the essence. It also provided that if P did not pay for the land within a reasonable time after the last payment was due he would turn the land over to D. During P's sickness D made no demands for payments that were due. Is P entitled to specific performance?

Held: Yes. D had the following options,(1) To press for payment of the instalments, and when not paid, give reasonable notice that he would make time of the essence. (Note that even though time is not expressly made of the essence in the original contract it can be made of the essence by subsequent reasonable notice. Then P might have sold his interest to one who could pay or arranged for a loan. At least he would have had a chance to try), or,(2)to waive his rights to insist on reasonably prompt performance. In this case D has done the latter. D was amply secured so the argument that P should not be allowed to speculate at D's expense is not valid, as it might well have been if the contract was wholly executory. What is a reasonable time depends on the facts of each case and under the facts of the case the trial court could properly find that a reasonable time had not expired. Decree for specific performance granted in spite of fact that land values had in the meantime greatly increased.

EQUITY Bills and Notes Contribution Corporations 191 Va.495

A corporation borrowed $3500 on its note signed by it, and by A and B who were officers and stockholders, and by C who was not an officer and stockholder. The corporations became insolvent and the payee collected the whole sum from C. A is insolvent and out of the jurisdiction. C sued B in an action at law. Is B liable for all, for half, or for one third?

Stated: In the absence of an agreement there is a conflict of authority as to whether or not an officer and stockholder of a corporation who signs to lend his credit to the corporation is an accommodation maker. Some courts have held that the benefit he gets indirectly prevents him from being an accommodation party. But in the instant case all three parties agreed that each one was to sign for the accommodation of the corporation so they are all accommodation makers as among themselves.

Held: If C had sued B in equity C could have recovered one half on the theory that equality is equity and the burden of A's insolvency and non-availability should be divided equally between B and C. But C sued at law where he can only recover B's pro-rata share on the theory that that is all any of the co-makers impliedly promised to pay by way of contribution if one paid more than his share. In fact that is the reason that the remedy at law is often inadequate. In this case C sued B at law and hence can recover a judgment for only one third. The distinction between law and equit in this matter is both substantive and procedural. Williston and Restatement of Law of Restitution are in accord.

EQUITY Contracts 191 Va.916.

Arthur Murray enjoys a national reputation as a dancing master, teacher and exponent of modern ballroom dancing. He and his wife have organized a corporation and under its authority other persons conduct dancing schools in Richmond and elsewhere. P conducts the school in Richmond and engaged D as a dancing instructor giving him special training in that art. D agreed in writing not to engage directly or indirectly in the teaching of dancing within Richmond or within 25 miles of Richmond for two years after the termination of his employment with P. In violation of this agreement, D, after his rightful discharge by P, started a competing school in Richmond. Is P entitled to an injunction?

Held: Yes. The above restrictions are reasonable both as to space and time and reasonably necessary for the protection of P, and hence valid. Because of the difficulty in proving damages and the possibility that P might suffer an irreparable injury, a court of equity will give injunctive relief. Note: Had the time been unreasonably long, or the places restricted too large (as within 25 miles of any city in which an Arthur Murray school is conducted), or had D's contract of employment been wrongfully broken so that D could have rightfully rescinded, the result would have been different

EQUITY Clean Hands Mutuality 193 Va. 437

D borrowed money from P, a wealthy man, at an usurious rate of interest and gave a deed of trust to P to secure the debt. D later agreed to sell the land in question to P. The contract read that D agreed to sell the land for $11,000 to be paid as follows - - -." The contract did not specify the kind of deed D was to give P. D had sued P for the usurious interest and the claim had been compromised. P demanded a general warranty deed and when refused filed this bill for specific performance. The defenses were (1) Lack of clean hands; (2) Lack of mutuality.

Held for P. The doctrine of clean hands has no application to collateral matters. The usury charges and the settlement thereof were separate and distinct matters only remotely connected with the present controversy. When P filed his bill seeking specific performance he placed himself under the court's jurisdiction and he will be bound by the decree just as much as D even though he has not expressly promised to buy the land.

Note: The court also said (1) that there may be a parol rescission of a written contract to sell land if both parties agree thereto but the burden of proving such a parol rescission is on the party claiming it, and his evidence to that effect must be clear and convincing. (In the instant case the evidence was insufficient to establish a parol rescission) (2) that in the absence of agreement to the contrary the usual type of deed is to be given, namely a general warranty deed with the usual covenants of title.

EQUITY Easements He Who Seeks Equity Must Do Equity 69 S.E.2d 342, 193 Va.522

In 1937 D was the owner of two adjoining lots, Nos. 33 and 34 each fronting 25 feet on the east side of M Street and running back 150 feet to an alley. By deed dated July 24, 1937 he conveyed to S the front two-thirds of these lots. On the rear one-third D erected a dwelling and garage for rental purposes. S built a house on his property 8 feet from the southern boundary. D's deed to S contained this reservation: "There is reserved however a right-of-way ten feet in width, along the south side of the two lots herein conveyed, for the benefit of the property in the rear." S conveyed his property to T subject to the reservation and T conveyed to P making no mention of the reservation. D supposed the reservation was along the north boundary of the lo and used a driveway accordingly. P claimed to own the land free from any easement contending that D had abandoned the easement on the south side and that he never had one on the north side.

Held: For D. He could not have intended to abandon what he did not know he had. P who is seeking equity in this case must do equity. He had constructive notice of D's rights as they were in P's chain of title. If P wants the easement over the south ten feet (which is partially blocked by his house) extinguished he must give D its equivalent-- in this case an easement over the north ten feet. He must admit and provide for all the equitable rights, claims, and demands justly belonging to the adversary party and growing out of the subject matter of the controversy.

EQUITY - Rescission 1310. 193 Va.735.

Mrs. P was a widow without business experience who had entrusted the management of her farm to her brother, B, an experienced business man. She was hard pressed financially and sold 31 acres of land to B for $275. Neither knew that the land so sold contained valuable timber worth ten times $275. When B later discovered this fact he sold the timber for $2750 and refused to account for the proceeds. Is Mrs. P entitled to rescind and to an accounting?

Held: Yes. There was at least constructive fraud. He stood in a fiduciary relationship. There was a mutual mistake of fact and a grossly inadequate consideration. Hence it is immaterial that he did not intend any actual fraud.

EQUITY Plea in equity - rt. to trial by jury 193 Va.864.

A bill in equity was filed by P to enjoin D from using a certain road across P's land. D entered a plea in which he claimed a prescriptive right to the use of the road. Questions (1) Is either party entitled as of right to a jury trial? (2)Is this a case for an issue out of chancery if the evidence is conflicting?(3) If there is a jury trial is its verdict advisory only in that it is merely "to inform the conscience of the chancellor?"

Held: In the case of a plea in equity(where a single issue of fact is involved) V#8-213 gives either party a right to a jury trial as of right. This is not an issue out of chancery. The object of the jury trial in this situation is to determine the issue of fact raised by the plea, and not to inform the conscience of the chancellor.

EQUITY Juris to settle title disputes 194 Va.607.

P claimed to own a tract of land from which D was cutting timber. P applied for an injunction. D defennded on the ground that P did not own the land in question. Can a court of equity pass on the status of P's title?

Held: Yes. "Originally, an action of ejectment was the exclusive remedy to try title and settle controverted boundaries of land, but this rule has been modified by statutes(Code of 1950, secs.8-836 and 55-153) and modern decisions.

"The general rule is that in the absence of some peculiar equity arising out of the conduct, situation or relation of the parties, a court of equity is without jurisdiction to settle disputes as to title and boundaries of land. But where the act done, or threatened to be done, would be destructive of the substance of the estate, or would result in irreparable injury, a court of equity will assume jurisdiction, restrain the perpetration of the wrong and prevent the injury. Equity having taken jurisdiction, it will then decide the whole controversy, though the issues are legal in their nature and are capable of being tried by a court of law."

EQUITY--Contracts--Statute of Frauds--Trusts 195 Va.196

H married W and had a son by her. W died soon thereafter. A year later H married X and lived with her until her death 46 years later. He had no children by her. However H and X reared along with H's son X's sister's child, P, though she was never adopted. X in her later years worried about P's being taken care of by H. According to P's allegations X and H orally agreed that X was to make a will in favor of H, and that H was to make a will in which P would be taken care of. X made her will in favor of H, and sometime later H made a will in which P was taken care of. Neither will said anything about a contract or understanding, nor was the attorney who drew them told of any such agreement. Since both H and X owned realty the promise to devise it was within the statute of frauds. X died and a year later H married Y. H died on the fourth day of his honeymoon without having made a new will. His marriage to Y revoked the will he had made in which he had provided for P. H had permitted P to occupy some of his land free of charge. What are P's rights?

Held: She has no rights. H's promise to X to devise any portion of his estate containing realty to P was within the statute of frauds. His promise to "look out for" P is too uncertain and indefinite. X's making her will in favor of H, and H's allowing P to occupy some of the realty free of charge are not sufficient part performance of the alleged promise to take it out of the statute of frauds,because

these things could have very well been done because of mutual love and affection independent of any agreement. The act done to amount to sufficient part performance to remove the promise from the statute of frauds in equity must, in effect, itself prove the promise or some part thereof. The acts performed in this case do not do that. Nor will equity declare a trust. There was no evidence of any express trust. H was not guilty of any tort or fraud. There is no reason for equity to perfect an imperfect gift.

EQUITY Reformation 195 Va.784.

Complainants sought to reform deeds claiming that they had orally contracted to buy certain lots according to one plat, and that the deeds when given were according to a re-plat which cut the size of the lots down considerably. Defenses relied upon were the parol evidence rule and the statute of frauds.

Held: Neither of these prevent reformation in equity because of fraud and mistake. The object of the parol evidence is to establish the true contract. Reformation in equity constitutes a well settled exception to the parol evidence rule and the statute of frauds.

EQUITY 195 Va.919. 81 S.E.2d 425

A,B,and C were trustees of the X Church which was in bad shape physically and practically abandoned by the congregation. $250 was owed to G for fixtures. A,B and C deeded the church properties to the Y Church in 1936 with the following understanding (1)G would be paid $250, and(2)members of the X Church could hold services one Sunday in each month at the church. The Y Church paid G, repaired the Church building; and added on to the Church. All went well for 14 years when there was a disagreement about the time the X Church congregation could use the building. The X Church then claimed the whole property on the ground that neither its congregation nor the Court had approved the sale as required by statute. Is the X Church entitled to the exclusive possession of the property?

Held: No. While the legal title may not have passed, equity will protect the Y Church. Two maxims of equity are applicable:(1)He who seeks equity must do equity. It would be inequitable to take the Church away from the Y Church after it had in good faith paid the $250 to G and put its funds into repairing and adding on to the Church.(2)Equity aids only the vigilant. The congregation of the X Church knew what was going on for 14 years and made no objection while the Y Church made substantial changes of position. They are now barred by their laches.

EQUITY 195 Va.956.

M and S, mother and son, owned timberland as joint tenants with survivorship. M agreed in writing to sell the land to P for $45,000 if S would consent. S executed a deed and left it in escrow on condition that $75,000 be paid for the land, and M refused to execute a deed at all. P filed a bill for specific performance against M and S with the request that if S was not liable specific performance with an abatement be granted as against M. P contended that M's agreement in writing severed the jointure and made her a tenant in common.

Held: There is no need to pass on the point. M never at any time agreed to sell an undivided half interest. A court of equity will not impose a different contract than the one made.

EQUITY--Pleading and Practice--Partition 196 Va.32.

P sought partition of Blackacre. He claimed a one-eighth undivided interest merely stating that he had acquired same "by successive conveyances" from one S who had died in 1895. He also asked the court to decree that one M(who claimed title to the whole by adverse possession by virtue of his own occupancy for over 15 years) had no rights in the land.

Held for defendants for two reasons.(a)P must prove his own title as part of his case. He does not do this by merely alleging that he has a one-eighth interest.(b) An equity court will not, in a partition suit, pass on the rights of a third party claiming the whole under a separate and distinct basis of title. M is entitled to a jury trial on the facts relevant as to whether or not he has obtained by adverse possession.If M's claims are correct there is nothing to partition as M would be sole owner.

EQUITY Reformation 1312. 196 Va.,195,209.

Suppose that the insured and insurer have made a mutual mistake and that as a result thereof the policy does not cover some of the property that was meant to be covered and that insured has been negligent in not discovering that fact until after a fire has occurred, is a suit for reformation barred?

Held: No. It is well settled that "The negligent failure of a party to know or discover the facts, as to which both parties are under a mistake, does not preclude rescission or reformation on account thereof". Restatement Contracts #508.

EQUITY Property Encroachment 196 Va.360.

X owned two adjoining tracts of land, North Tract and South Tract. There was a house on North Tract which enroached some three feet on South Tract. X agreed to sell North Tract to D for a stated consideration and D agreed to move the house some fifteen feet further North so that it would no longer enroach. Nothing was said about the agreement running with the land or that it was to be enforcable by any one other than the parties. When the deed was executed no mention was made of the agreement but a plat was attached which showed by dotted lines the new location of the house. X sold South Tract to P who soon demanded that D remove the enroachment. This would cost D some $3,000 and would benefit P only slightly. P asked for a mandatory injunction. D claimed there was an adequate remedy at law and that X had orally waived his right to require a removal of the house before X sold to D.

Held:(1) Neither ejectment nor unlawful detainer were adequate remedies. They merely establish title or right to possession and give damages, but the encroachment still remains;(2) P was not a third party beneficiary as the contract between X and D was not made for anyone else but them. It does not run with the land as there was no intention that it should;(3)Mandatory injunction granted to put an end to D's continuing trespass. Even if X orally agreed that D need not remove the house, the oral attempt to change boundaries is legally ineffective. It is no defense to a willful trespass that defendant will be injured a great deal more than plaintiff will be benefited, as plaintiff has the right to enjoy all his land including the part covered by the encroachment.

EQUITY Contracts Specific Performance 196 Va.493.

Both P and D had had a few drinks. In fact D testified that he was as "high as a Georgia pine", but he remembered the details of the transaction and was not so drunk but what his wife requested him to take P home. D had paid $11,000 for a farm some years before and P had attempted to buy it for some time. P approached D in the latter's restaurant and said "I'll bet you wouldn't sell it for $50,000". D replied that P didn't have $50,000 and he couldn't raise $50,000. P said for D to put it in writing and he would show him. D then wrote a memorandum on the back of a restaurant slip as follows, "I do hereby agree to sell to P the Ferguson Farm for $50,000 complete". P said to change the "I" to "We" as D's wife would have to sign too. He also suggested that "Title to be satisfactory to buyer" be added. These changes were made and D signed. D then went over to where his wife was working and asked her to sign whispering to her he was just ribbing P. Everyone was laughing and cutting up. D's wife signed and D returned with the memorandum and put it down. P reached over, picked it up, looked at it, and then stuck it in his pocket. On the next business day P had a lawyer examine the title. It was O.K. On the next day P tendered D $50,000 but D said, "You know I didn't want to sell, I want to keep the farm for my son. We were both high and I was only joking with you about selling". Is P entitled to specific performance?

Held: Yes. The parties were not so drunk as not to know what they were doing. The fact that D can remember the details, and could write out the memo, and could be suggested by his wife as fit to take P home shows that fact. If he were joking, P was not. He did not tell P he was not in earnest. Whispering to one's wife out of the hearing of P was not enough to apprise P that D was jesting. There was a valid delivery of the memorandum to P since D did not object to him taking it away. In statute of frauds cases it is only necessary that the parties to be charged sign the memorandum as the statute is passed to protect those who do not sign, and not those who do sign.(It was immaterial that D refused an offer of $5 to bind the

contract, for there is an offer to sell, and an acceptance before the offer was with drawn). There were no fraudulent representations and no inadequacy of consideration.

EQUITY Contracts 196 Va. 526

D agreed to sell and P agreed to buy a four acre tract of land at the intersection of Shirley highway and Seminary road for $40,000. The contract also provided(at P's insistence) "If this land cannot be rezoned for use as a Motel, this contract is null and void". Later D wrote P, "As the contract involves rezoning which cannot be accomplished for approximately 2 months, I hereby agree to extend the settlement date from Feb.19,1952 to April 19,1952. A copy of this memorandum is to be attached to and made a part of our original contract". This modification was accepted by P. The place for final settlement was at X's office. It became apparent that no rezoning could be had by April 19th and D refused to allow any further extension. She also in effect said the deal was off and for P to see her lawyer. P sued D for specific performance. D contended,(1)There was no consideration for the time extension,(2)The contract was null and void since there had been no rezoning,(3)That since P did not have to buy there was no mutality of remedy,(4)That P had made his tender at Y's office instead of at X's office. Which of these contentions, if any are sound?

Held: None of them are sound,(1)The consideration which supported the original contract equally supports the contract as modified with the assent of each party. It is the same as if the original contract had provided for April 19th;(2) The provision about rezoning was made solely for P's benefit and hence he can waive it; (3) Having waived it and filed his bill for specific performance he will be just as much bound to buy as D is to sell; (4) Since D by her actions clearly showed that no tender would be accepted, P was under no duty to tender performance anywhere. Hence it is immaterial that he offered to perform at Y's office instead of at X's office.

EQUITY Partition 196 Va.614

X and Y owned Blackacre as tenants in common. Y was an incompetent. X filed a bill for partition and L was appointed as Y's guardian ad litem. It appeared from the record(1)That the land was susceptible to division in kind,(2)that X was able to buy Y's interest(3)that Y was not able to buy X's interest. The court decreed that X buy Y's interest and accordingly $4,750 was paid to Y's committee. This included one half the cost of the partition suit, and was accepted by Y's committee. Land values increased. Y died. Y's widow and heirs now challenge the validity of the decree.

Held: The decree was invalid and the record shows that fact on its face. Note the following points:(1)In the absence of statute courts of equity do not have inherent power to sell land for the purpose of partition.(2)By V#8-692 land may be sold provided(a)partition in kind cannot be conveniently made and(b)that the interest of the parties owning the land will be promoted by a sale. These are indispensable conditions. Since the record shows on its face that the first of these conditions did not exist the court had no jurisdiction to order a sale; the decree is void, and can be collaterally attacked.

EQUITY 196 Va.747.

D, a duly licensed private contract carrier, carried goods at a less rate than that charged by common carriers in violation of statute which made such an act a crime. Is C, a competing common carrier, entitled to an injunction?

Held: Yes. He is specially injured and the amount of damages to which he is entitled is difficult to ascertain. Hence there is no adequate remedy at law. The fact that the act of D is also a crime does not oust equity of jurisdiction it would have if the act were not a crime.

EQUITY Evidence 1954 196 Va.997.

H and W were husband and wife. Each had children by a prior marriage, and they were a devoted couple. H deeded his realty to W in fee simple by a warranty deed. They later went to a lawyer and H executed a will. There was no sufficient proof that W executed a will. After W's death intestate H filed a bill in equity to compel W's heirs to convey the land they had inherited to H who claimed that when he deeded his realty to W he did so in return for her oral promise to devise the land to him if he were the longer liver. Is he entitled to the relief sought?

Held: No, for two reasons. First Code 8-286 is not satisfied. Since W is dead H cannot recover on his uncorroborated testimony. Second, the oral promise to devise realty is within the statute of frauds. One of the requirements to take such a promise out of the statute of frauds in equity is that the part performance refer to or result from the alleged agreement, and is not such an act as would quite normally take place anyway. This requirement is not met as H could have easily deeded the land to his wife for her protection and in appreciation for her many years of effort in his behalf.

EQUITY Specific Performance Unique Personalty 89 S.E.2d 64, 197 Va.208.

The Commonwealth of Virginia, hereinafter called C, had a contract with T by which T obligated himself to prepare, build, construct and deliver certain units for the electrical voting machine used by the legislature. These units cannot be purchased on the market, but can be made by a first-class machine shop. C wishes specific performance of the contract. T claims that it would take him several months to make the units and that a court decree ordering him to do so would be involuntary servitude.

Held: Decree should be granted. If T does not want to do the work himself let him find a first class machine shop to do it for him. That burden should be on T and not on C. Since the personalty here is unique a court of equity will grant specific performance as the remedy at law is inadequate.

EQUITY Partition 197 Va.498.

Held: Partition is statutory in Virginia. There can be no sale of the whole unless it is first found by the court in its own way(i.e. by evidence taken in court, or by reference to Commissioners, or to a master, as the court may see fit)that partition in kind cannot conveniently be made.

EQUITY--Contracts 198 Va.758.

On February 7, 1955, D agreed in writing to sell his farm to P for $600 per acre. P agreed to comply with the agreement within 40 days from date. Terms and payments were to be decided upon after a survey of the farm was made. Both parties signed the agreement. Afterwards D refused to agree to any terms and P filed a bill in Equity for specific performance of the contract. Is he entitled to that remedy?

Held: For D. There is no valid contract as the parties have not agreed upon the terms of payment. The fact that P was willing to settle on any terms that D would agree to does not show that an agreement was reached. Note: If there had been convincing evidence that the parties had orally agreed upon the terms of payment after the agreement had been signed, then the plaintiff would have been entitled to specific performance.

EQUITY Enjoin Violation of Criminal Statute 199 Va.165.

Equity will enjoin the violation of a criminal statute where such violation results in special damages to property rights when the amount of such damages would be difficult to ascertain. Thus if a contract carrier actively solicited and handled commodities which it had no right to handle in violation of the criminal law and to the indefinite injury of a common carrier, the latter would be entitled to an injunction as it would have no adequate remedy at law. The fact that there was also a violation of the criminal law would be immaterial.

EQUITY--Specific Performance 199 Va.234.

D bought a tract of land from X. The deed provided that D could not resubdivide this land in parcels of less than five acres without X's consent. D contracted to sell a parcel of 2.13 acres to P with the understanding that the contract should become void if X refused his consent. X was willing to give his consent only if D would agree to X's version as to the meaning of certain ambiguous clauses in the deed from X to D. D was not willing to acquiesce. P filed a bill in equity for specific performance.

Held: For D. The consent of X which P and D each had in mind was a free consent without further consideration. The giving up of a right to contest an ambiguous or doubtful clause is a valuable consideration. The remedy of specific performance is not one of absolute right and should be refused where a condition precedent to that right has not taken place.

EQUITY--Contracts--Release 199 Va.243.

Lee agreed to take $100 as settlement in full for damages caused by S's negligence in running into the oil truck Lee was driving whether said damages were known or unknown. This amount was meant to reimburse Lee for his out of pocket costs, to wit $6 for two visits to the doctor and $94 for wages lost while the oil truck was being repaired. It later developed that Lee had suffered a severe latent nerve injury which caused him to lose the use of his arm. S wishes specific performance of Lee's release and Lee wishes the release cancelled for mutual mistake.

Held: The release should be cancelled for mutual mistake. The insignificant consideration and the method used to arrive at the amount of $100 indicate that both parties mistakenly assumed that there were no serious personal injuries. The mutual mistake goes to the essence of the matter and prevents Lee's agreement to release S from being enforceable.

EQUITY--Rescission Reg. 33.2 199 Va.654.

Mrs. N(formerly Mrs.S) had seven sons by S. She operated an eighteen unit tourist court. She and her sons conveyed a tract of land to N. The consideration for this conveyance was a promise on the part of N to construct eighteen more units on the land so conveyed, to allow Mrs. N to manage the thirty six units as one enterprise, and to give the sons half the net profits. N constructed the additional units at a cost of $71,000. Since he was engaged in lumbering operations and did part of the work himself this was a low cost price. The parties fell out and N refused to allow Mrs. N to manage the business. Mrs. N and her sons seek to rescind the conveyance because of failure of consideration. The trial court decreed a rescission on condition that N be paid $100,000. The court reached that figure by consulting out of court a reliable contractor who told the chancellor that building costs had gone up 25% since the units had been built and by taking into consideration the fact that the original cost was low for the reasons stated above.

Held: Rescission granted, but N is not entitled to $100,000. It was error for the court to consult a contractor out of court as he cannot be examined and cross-examined by the parties and his testimony cannot be gotten into the record. Besides it was N's duty to build the units at as low a cost as possible consistent with quality. He should not profit by his own breach of contract.

EQUITY--Contracts-Landlord and Tenant 1316. 200 Va.38

L leased a filling station to T for two years. The term ended on Nov.1,1956. By the terms of the lease T had an option to renew for an additional period of four years, "provided, however, the lessee shall give the lessor 30 days written notice of his intention to renew said lease before it expires". No notice was given, and o Oct.6,1958 L wrote T that he expected possession on Nov.1,1958. On Oct.8 T wrote L that he was renewing the lease. T had made expenditures for improvements of some $4,000 relying on his right to renew. His failure to give notice on time was inadvertent. After Nov.1 L brought unlawful detainer proceedings and T filed a bill in equity to enjoin the prosecution of such proceedings and for the determination of his rights.

Held: For L. Equity aids the vigilant and not the negligent. It cannot rewrite the contract. Time is of the essence in option contracts. T is the author of his own misfortune. Hard cases should no more be allowed to make bad equity than bad law. In order for equity to give relief there must be some basis for its jurisdiction such as fraud, mistake or surprise.

EQUITY--Specific Performance of Parol Contract to Sell Land 201 Va.333

Mrs. D was the daughter of P's wife by a former marriage. While P and his wife were alive P built a house on a lot near Mr. and Mrs. D's home on land owned by them and moved into it. P alleged that it was orally agreed that in consideration of P's building this house Mr. and Mrs. D would convey the lot to P and his wife. P prepared a deed which Mr. and Mrs. D refused to sign. Two years later Mr. and Mrs. D deeded a life estate to P's wife. When P's wife died P left the premises and made no objection to Mr. and Mrs. D's adding on two more rooms to the house. P is now seeking specific performance of his version of the oral contract on the ground that his performance thereof took it out of the statute of frauds in equity.

Held: For defendants. P has not clearly proved the contract. The evidence is stronger the other way, as P made no objection to a deed of a life estate to his wife, vacated the premises at her death, and allowed the D·s to improve the premises at their own expense. It also appeared that the primary purpose of the contract was to enable Mrs. D to look after her mother during her old age.

EQUITY--Specific Performance 201 Va.542.

Defendants signed a contract with Plaintiffs for the purchase of a tract of land with the intention of subdividing it. After signing they discovered that a city ordinance prohibited subdivisions of property unless it fronted on a street at least 50 feet wide. Plaintiffs did not know of Defendant's purpose. Access to this property could be had only through a 12 foot lane. Are Plaintiffs entitled to specific performance?

Held: Yes. There was no fraud and a mistake on one side only did not give defendant a valid excuse to avoid their contract.

EQUITY--Equity Pleading--The Plea 1317. Jury Trial 203 Va.43

D was cashier for P, and according to P's contention D embezzled $16,000 of which she gave some to her parents, purchased real estate with some, bought a car and a pony with some, and put some in the B Bank in a joint account with her parents. P filed a bill in equity against D and her parents praying that they be required to account for the sums embezzled, that they be enjoined from disposing of any of the property mentioned above, and that they be declared trustees thereof and be required to convey these properties to P. Defendants demurred for want of equity on the ground that P had an adequate remedy at law.

I. Held: Demurrer overruled. While he does have a legal remedy it is not as complete and as adequate as the equity one for which P has prayed.

II. When the demurrer was overruled D entered a plea to the effect that she had not embezzled any money from P. Is she entitled to a jury trial as of right? Yes, by V#8-213 which provides, "A plaintiff in equity may take issue upon a plea, and either party may have such issue tried by a jury." If D wins on this single issue, that disposes of the case.

III. So the Chancellor submitted two questions to the jury,(1)Whether D had unlawfully taken money from P, and if so,(2)the amount of money so taken. The evidence was voluminous and the jury reported back that they were hopelessly deadlocked. The Chancellor then sent the jury back for further deliberation on question 1 only, the jury then found a verdict for P. The defendants objected and excepted. Held: Since a plea raises only one issue of fact determinative of the case it was error to submit two questions. The Chancellor should be commended for correcting his error. How much was wrongfully taken then becomes a matter of accounting. "The amount involved in the embezzlement was in no way a bar to the suit." It was merely an issue to the merits of the suit and therefore properly subject to a general answer in equity and not subject to a special plea."

EQUITY--Declaratory Judgments--Enjoining Actions at Law 203 Va.657.

X was engaged in the business of selling cars. He borrowed heavily from the B Bank under a floor planning arrangement which the B Bank explained to its attorney, A, meant that whenever X sold a car that was floor planned(i.e. a certain car in a certain spot inside, or out in the lot, by pre-arrangement) X should turn over as much of the proceeds of the sale to Bank as Bank had lent on the security of that car. A representative of the B Bank made an unexpected spot check and discovered that eight vehicles were missing for which no payment had been made to the Bank. This was reported to A who advised prosecutions for larceny. Indictments were returned against X who was acquitted on the defense that the money collected from the sales had been used to pay prior lienholders, and that in such cases the B Bank had always given X more time in which to repay it. X then threatened to sue the B Bank for malicious prosecution in the case of each of the indictments. The B Bank then applied for a declaratory judgment to the effect that it was not liable to X since it acted on advice of counsel.(X contended that Bank failed to tell A of the situation in which it had customarily waited for the money). The B Bank claimed that if X prosecuted all the malicious prosecution suits it would suffer irreparable injury, that it had a defense, and that it was entitled to an injunction to prevent such prosecutions.

Held: No such relief should be given. Statutes allowing declaratory judgments are meant to supplement the law and not to substitute such judgments for the usual run of cases. The relief asked confuses the distinctions between law and equity and would deprive X of his right to a jury trial. There is no disputed question of law in controversy, but only one of fact. If Bank has a defense no reason is seen why it cannot make that defense when sued at law. "A suit at law cannot be enjoined and the litigation transferred to the equity forum merely on the assertion of defenses that are pleadable at law."

EQUITY Specific Performance with an Abatement 1318. 204 Va.717.

In 1955 A, B, and C agreed to convey Blackacre to P, and P was to prepare the deed. P neglected to prepare the deed whereupon A, B, and C tendered back a check P had given them as earnest money. P refused the check and almost five years later filed this suit for specific performance. It appeared that the heirs of one of the vendors had a contingent remainder, and that land values had risen sharply since the contract had been entered into. The chancellor refused to grant specific performance either with or without an abatement.

Held: Affirmed. Specific performance is a discretionary remedy. It was not an abuse of discretion to refuse it, when the rights of contingent infant remaindermen were involved and when P had waited for almost five years and then decided to act only after he found that land values had risen greatly.

EQUITY--Equitable Conversion--Property 205 Va.363.

A, now deceased, died testate at the age of 87. She lived with B, an older sister, and C, a brother in law in his seventies. A had an undivided one fourth interest, B an undivided fourth interest and C an undivided half interest in Blackacre. Some five years before her death A made a will in which she devised her interest in Blackacre to C. Shortly before her death she made another will which also devised her interest in Blackacre to C. Before making this will, A, B and C had contracted to sell Blackacre to X. A's residuary beneficiaries claimed that under the doctrine of equitable conversion A's interest in Blackacre should be regarded as money and become part of the residuary estate.

Held: Contention is wrong. The doctrine of equitable conversion is never used to defeat the clear intent of a party. Here the facts indicate clearly that A wished C to have her interest in Blackacre whatever it might be. In this case it is a fourth interest in the legal title subject to the burdens and benefits of the contract.

EQUITY--Making new contracts--He who seaks equity must do equity 205 Va.503.

D deeded a lot in its subdivision to P said lot to be used for residential purposes In the deed P covenanted not to dig any well or procure water from underground sources on his lot. D's agent allegedly orally told P as an inducement for purchase that he could hook onto D's water line on payment of a $200 connection charge and that there would be no further charges. After P had made his connection he tendered D $200 which tender was refused. D later presented P with a water service contract which was radically different from the alleged oral agreement.

The Chancellor granted the relief prayed for but required P as a condition to getting this relief to enter into a contract with D by which he agreed to pay his fair share of the cost of the maintenance and replacement of D's water supply system. Objection was made on the ground that a court of equity will not make contracts for the parties which they have not made for themselves.

Held: The Court is not making contracts for the parties which they have not made, but applying the principle that he who seeks equity must do equity. The parties must have known that it costs money to maintain a water works system and if P wants the help of equity he must be willing to do equity--i.e. pay his fair portion of these expenses.

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X, an incompetent, owned Sea Breeze Farm in Virginia Beach. C was appointed by the Court as a special Commissioner to sell this farm. C advertised for sealed bids from all interested parties, and also requested that these bids state the amount offered for the farm as a whole, and the amount offered for a certain major portion thereof, and the minor portion. When the sealed bids were opened in the presence of all bidders it appeared that A had offered $354,000 for the whole farm, or, $229,000 for the major portion and $125,000 for the minor portion while B had offered $328,000 for the whole farm, or $234,000 for the smaller tract and $94,000 for the larger tract. Thereupon B told C that he had erred, and that the bid should be $234,000 for the larger tract and $94,000 for the smaller. C, without anyone objecting, permitted the bid to be corrected and then prepared deeds which would convey the larger tract to B and the smaller tract to A. C reported all the above facts to the court. A objected to confirmation of the sale on the ground that C had no right to permit B to amend his bid or to sell the farm in parcels.

Held: The sale should be confirmed. While C had no authority to permit a change in B's bid, C only acts as the ministerial agent of the Court, and it is the court that is permitting the correction and not C. In allowing the correction of an obvious error with no one objecting at the time the court did not abuse its discretionary powers. Further, land of an incompetent should be sold for the highest price obtainable, and if a sale in parcels will enable that objective to be accomplished, then such a sale should be made.