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Power of Equity to Determine Title to Real Property

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Background to Problem

The height of civilization to which any people has attained can be gauged by the governmental machinery available for the satisfaction of social needs. The human desire for physical security and compulsory fair dealing has forced the evolution of the administration of justice to its present, though changing, form. Two branches of the judicial system have long existed in rather distinct forms. The Courts of Law and the Courts of Chancery have existed side by side since the emergence of England from the Dark Ages — each with its separate and characteristic function in the system of assuring justice to individuals. In order to understand the nature of the two divisions, one might think of the remedies of a Law Court as the medicine prescribed by society to an existing injury arising from a wrongful act toward a member of the society. In contra-distinction, the purpose of the Court of Equity should be viewed as a preventive remedy, rather than a cure, for injuries which will be incurred and which the Law Court cannot forestall. So the functions of the two separate Courts are a result of the social necessity for a separate kind of treatment for problems falling into generally distinct classes.

The subject to be treated here deals with situations where both branches of our smooth stream of Anglo-American jurisprudence have apparently flowed for a time in the same channel. This means that a Court of Equity has been able to leave its customary bounds and supply legal relief. The exact problem is whether Equity has jurisdiction to try title to real property, and if so, under what circumstances. When it is remembered that the origin of Equity was the European Continent,[1] and that the action of Ejectment was the English common-law action to determine ownership of land, it is more clearly seen why the Courts of Law are jealous of this prerogative. Of immeasurable significance to the right to try title at law is probably the traditional Anglo-American love of privately-owned land to which the possessor would, when being ejected, desire to have twelve of his peers decide his right.

The method in South Carolina to determine title to land is defined by *Bouvier* as: "Trespass to try title — The name used in South Carolina of the action for the recovery of possession of real

1. Desaussure's Equity Reports (Introduction) (S. C. 1917).

property, with damages for any trespass committed upon the same by defendant."[2] Therefore, it is seen that where the exclusive relief demanded is that of awarding title to land whose ownership is in dispute, the only recourse is to a Court of Law. But does there exist a condition or conditions which will enable a Court of Equity to establish a disputed title to real estate? Is there some state of circumstances which will permit Equity to give this remedy when jurisdiction is gained on another ground? The analysis of discovered authorities will give some answer to these questions.

Authority for Absolute Power After Jurisdiction Otherwise Acquired

It is a familiar doctrine of Equity that it will retain jurisdiction, once it has been attained, to determine all necessary and incidental rights among the parties in order to do complete justice.[3] This assumption of the power to give complete relief includes redress of both a legal and an equitable nature. This rule is discretionary and not peremptory, however, and will not be applied when to do so would defeat the fundamental rights of litigants. It can in no wise be invoked where there is no ground of equitable jurisdiction established. Applying this rule to the problem at hand, it can be seen that the recovery of land should not be merely collateral but must be only incidental to the equitable relief. Cases which support this rule, although scarce, have been discovered. The title of a defendant was established in a suit for redemption of land sold under a trust deed made by the former owner, on grounds that the sale was voidable. The plaintiff held by a subsequent deed from the former owner and defendant held title partly from such owner and partly from a trust sale.[4]

In another case a plaintiff sought an injunction to restrain trespasses in constructing a division fence. The defendant objected on grounds that the court had no jurisdiction to determine lines and corners, defendant claiming to be on his own land, the same property claimed by the complainant. The court held that a determination of the true division line was essential to the right of the plaintiff to the relief sought, and that the court of equity, having acquired jurisdiction to grant equitable relief, would retain the case to do complete justice.[5]

As early as 1808 in South Carolina, the problem was indirectly treated by way of dicta. In the case of *Shubrick v. Guerard*[6] plain-

2. BOUVIER, LAW DICTIONARY. (3rd Revision.)
3. POMEROY, EQ. JUR. § 238; C.J.S., Equity §§ 70, 30.
4. Farrar v. Payne, 73 Ill. 82 (1874).
5. McIntyre v. McIntyre, 237 Ill. 544.
6. 2 Desaussure's Equity Reports 616 (S. C. 1808).

tiff asked for an injunction to restrain defendant Geurard from cutting timber on lands claimed by plaintiff. The defendant claimed the land by an adverse title, and, indeed, there was an action of trespass to try title pending at law. The plaintiff was only able to get an injunction until the title could be determined on the law side, he being unable to persuade the chancellor to proceed to determine ownership and thereby do complete justice in the one action. But of primary importance is the discussion of an old English case where a plaintiff decided to restrain others from using his fishery. At the hearing in equity, there were many claimants who raised the issue of title to the fishery in themselves. The English court held that to restrict the complainant to his remedy at law would necessitate a multiplicity of suits, and therefore equity would retain jurisdiction and try the title to the real property concerned.[7] The case of *Mayor of York v. Pilkingham*[8] lends support to the right to try title by the retention of jurisdiction doctrine, this being another case where a multiplicity of suits would have occurred at law. The chancellor, considering these two old cases, refused to try the title to the land, giving as his reason the fact that plaintiff and defendant were the only parties involved and that there was no reason for equity to assume jurisdiction as only one suit would be necessary at law. This case probably contains the best authority in South Carolina for the power of equity to try title as a matter of inherent right, subject only to some equitable basis for acquiring jurisdiction.

The foregoing cases do not limit the power of Equity in any way once jurisdiction is obtained, and the court under this authority may proceed to try both issues of law and fact.

Permissive Power to Try Title

A careful analysis of discovered South Carolina cases reveals a situation where the equitable process is not questioned when the title issue is raised. In other words, there seems no doubt that the parties can consent to a final adjudication at Chancery. The case of *Alderman & Sons v. McKnight*[9] originated as a suit for specific performance. The plaintiff sought to enforce a contract for the sale of all the land to which defendant held good title. The defendant claimed to own more land than plaintiff believed she did. The issue then submitted to the referee was whether the defendant had a good and marketable title to all the land claimed by her. The referee

7. Teynham v. Herbert, 2 Atk. 483.
8. Mayor of York v. Pilkingham, 1 Atk. 282.
9. Alderman & Sons v. McKnight, 95 S. C. 245, 78 S. E. 982 (1913).

found that she had, and the Supreme Court on appeal refused to review the findings, giving as the reason the explanation that the decisions were findings of fact, of a legal nature which are not subject to review by the highest court. Thus the Supreme Court treats a referred issue of fact, ordinarily triable at law, as if actually tried there, and therefore findings upon the trial are binding thereafter.

In the case of *Peoples' Loan & Exchange Bank v. Garlington*[10] the suit was to foreclose a mortgage. There the remainderman of the estate had mortgaged his interest to plaintiff. After default, plaintiff brought suit to foreclose. The life tenant, however, raised the question of absolute title in himself. The court held that it had jurisdiction to dispose of the issue. But the parties agreed to waive a jury trial, and so presumably were entitled to one had they so desired. This is another situation where equity has been permitted to dispose of a case into which the question of title to land has been injected.

In another specific performance suit, a court decree was issued directing plaintiff and defendant to carry out their contract to swap lots, provided that plaintiff could give good title to property to be conveyed by her. The trial judge expressly refused to look into the state of the title, stating that to pass upon the reality of title would require the taking of testimony. Later, by the consent of all parties, an order of reference was made for the purpose of determining whether the plaintiff had a fee simple or a life estate. Again, equity had proceeded with the parties' consent.[11]

In *Griggs v. Griggs,* the suit was brought to quiet title. The court held that in order to succeed, the plaintiff would have to make out a complete title, in default of which the possession of the defendant could not be disturbed. The opinion stated that under the pleadings she was entitled to claim that she was either owner of the disputed land in fee, or had no interest at all. The opinion also states, "by consent the cause was referred to Master in Equity."[12] So apparently by permission equity proceeded to decide all issues.

Power to Try Title When Questions of Law Only Involved

So far the power of Equity to try title has been discussed only where that question depended on findings of fact. Some of the discovered cases apparently have not had to stand on either the quali-

10. Peoples' Loan & Exchange Bank v. Garlington, 54 S. C. 413, 32 S. E. 513 (1898).
11. Jones v. Williams, 89 S. C. 574, 72 S. E. 548 (1910).
12. Griggs v. Griggs, 199 S. C. 295, 19 S. E. 2d 477 (1941).

fication of retention of jurisdiction or that of permissive power. These cases involve no controversy as to facts. Only the law is being disputed. The cases seem to allow the chancellor or master in equity to decide all matters of law in equity, although the question being decided would be, if treated alone, purely a question of law.

In *Williams v. McCarthy*[13] the plaintiff sought the aid of equity to recover funds received from timber appropriated by another by following the proceeds. The title of plaintiff to the timber was denied by defendant. The court held that its power was not affected by the necessity to construe papers which were the basis of claimant's title. Here it was contended that the controversy was cognizable only at law, and that plaintiff would first have to resort there in order to prove his ownership. The opinion stated that this might be correct if plaintiff's title depended on anything more than the construction of instruments, and that in this case no question of fact was to be determined.

In a case arising in South Carolina, the Supreme Court affirmed the finding of a circuit judge as to the amount of land in controversy. The suit began for the purpose of compelling specific performance for the sale of land. Before the time set for the conveyance, the plaintiff was allowed to clear the timber and erect structures on that part which the defendant claimed upon trial was not included in the contract. Both parties claim equitable ownership of the property. The court held defendant, however, ignorant he was of the boundary, could not sell property, permit vendee to clear it and build upon it, and then seize it. The defendant was estopped from denying purchaser's title. Since the doctrine of estoppel to contest title is a matter of law, and was in this case based on undisputed facts, there was no logical reason to prevent the circuit judge, sitting in equity, from determining the title to the land.[14]

Another example of this practice is the case of *Stackhouse v. Wheeler*.[15] Here there was a contest between the purchasers of the same land at two public sales. A purchaser bought the land at a sheriff's sale held to sell the interest of the debtor in her deceased husband's estate, the widow being the devisee and executrix. This sale was based upon a judgment recovered against the widow. The purchaser knew that an action, instituted by the plaintiff, was then pending to subject the same property to the payment of the testa-

13. Williams v. McCarthy, 82 W. Va. 158, 95 S. E. 638 (1918); Wolf v. Hayes, 161 S. C. 293, 159 S. E. 620 (1931).
14. Latimer v. Marchbanks, 57 S. C. 267, 35 S. E. 48 (1900).
15. Stackhouse v. Wheeler, 17 S. C. 91 (1881).

tor's debts. In that action, a court order was issued authorizing the sale of the property. The buyer at this sale and the one under the sheriff's judgment sale were then competing. The court held that the purchaser at the sheriff's sale had no valid title as against the subsequent buyer under court order. Again the court has applied purely legal rules to undisputed questions of fact, and has thereby retained jurisdiction to try title to land.

Conclusion

A thorough analysis of the foregoing discovered cases gives rise to certain conclusions, and when doubt precludes certainty, at least predictions can be made.

First, under the authorities of the first classification, equity possesses an absolute power to try title to land when such title can be predicated only upon findings of law, of facts, or both law and facts. The only condition to be met is that there be some substantial necessity for equitable relief. Then, after having assumed jurisdiction, equity can, against all objections, proceed to try a disputed title under the retention of jurisdiction doctrine. It must be emphasized that equity will not afford this legal remedy where the real basis of the action is legal in nature but only equitable in form. This was illustrated in the case of *The State v. Pacific Guano Co.*[16] There the State of South Carolina requested damages for the intrusion by the defendant upon lands claimed by the state, and for an injunction to restrain further trespass. The court decided that the purpose of the suit was actually to determine the ownership of land, and that since the plaintiff had no grounds for getting into the threshhold of equity, its rights when determined would be treated as having been determined at law.

The second category of cases contain situations where the consent of the parties to try title to land is given to the chancellor or other official in equity. These cases go only to prove that a court of Equity is not incompetent to try title provided it does so with the permission of the parties. In allowing this view, the right to have title tried at law by a jury may be waived. Also, once the chancellor in equity reaches a decision, if it be of fact, that decision is not reviewable. Thus when equity gives this legal remedy, the remedy is entirely legal and therefore findings of fact are treated exactly as if they had been returned by twelve jurors in a law court. This permissive power of equity to try title is conditional upon the existence of a substantial ground for getting into equity.

16. State v. Pacific Guano Co., 22 S. C. 50 (1884).

The third and last class of cases include those where only questions of law need be decided in order to determine title. This power would seem to exist independently of any consideration of consent. There would seem to be no good reason for rendering invalid a decision in equity, based on legal principles, simply because the issue was not removed to the law side to be decided by the same principles, and in South Carolina, by the same judge. The only requirement necessary would be, as in the other two classes, some basis for equitable relief. Then, under the retention of jurisdiction doctrine, the title to land could be determined merely as a point of law.

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