South Carolina Law Review

Volume 8 | Issue 1 Article 11

Fall 1955

Equity

Thomas M. Stubbs
University of South Carolina

EQUITY

THOMAS M. STUBBS*

Cases in Equity decided by the Supreme Court during the period in question were few in number. The reports are necessarily lengthy. Generally involved were multiple questions, and, in that sense, the cases are complicated. Still, none of these required the court to pass upon questions of first impression in this jurisdiction. These few cases are hereinafter classified in four groups into which they appear logically to fall.

Divorce

Forester v. Forester[1] is a rather typical action by a wife against her husband for separate maintenance and support. The case turned upon the weakness of complainant's proof before the trial court. While the evidence showed arguments and incompatibility as between the parties, there was neither charge nor proof of infidelity, physical cruelty or threats by the husband toward the wife. Despite the husband's repeated solicitations, the wife left the husband and refused longer to live with him. Nonetheless, and despite the complainant's weak showing, the trial court awarded her the relief sought. Upon appeal this order was reversed under Art. 5, § 4 of the Constitution of South Carolina, 1895, authorizing the Supreme Court in an Equity case to review facts submitted to the court below, and to reverse its order if contrary, in the view of the Supreme Court, to the preponderance or greater weight of the evidence. Grounds for separate maintenance are not fixed by statute, observed the court, but are left to the broad discretion of a court of equity, although they have been laid down in an early leading case, *Wise v. Wise*,[2] and followed by others, requiring, in substance, a showing of: (1) desertion, (2) physical cruelty and the like, or (3) indecent conduct, all on the part of the defendant. Clearly a showing of mere incompatibility falls far short of meeting any of these requirements.

Lyon v. Lyon,[3] while a bill in equity for divorce, really turns upon whether or not the facts stated therein were sufficient to constitute a cause of action. The allegations challenged by demurrer,[4] were as follows:

*Associate Professor of Law, University of South Carolina.

1. 226 S.C. 311, 85 S.E. 2d 187 (1954).
2. 60 S.C. 436, 447, 38 S.E. 794, 802 (1900).
3. 86 S.E. 2d 606 (S.C. 1955).
4. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-642 (6).

> Defendant has been given to excessive use of intoxicants and when he takes intoxicants it makes him a changed man, and makes him violent, and defendant has, on some occasions, applied physical violence and force to her, even going so far as choking her on one occasion, when plaintiff's brother stopped him.

These allegations were very properly held to state a cause of action, under Art. XVII, § 3 of the Constitution of South Carolina, 1895, which makes physical cruelty a ground for divorce. The court observes that the allegations as to cruelty, upon a proper motion to that end,[5] might have been ordered to be made more definite and certain, but none was made.

Miller v. Miller[6] was an action for complete divorce and alimony, on grounds of physical cruelty, brought by a wife against her husband. The master found that the evidence of physical cruelty warranting the wife leaving her husband in self defense was sufficient. This was affirmed by the circuit judge. Further, that although the wife's conduct toward her husband was not entirely blameless, it was not, under the doctrine of "clean hands",[7] sufficient to cut her off from the relief sought, *viz.* complete divorce and alimony. Upon appeal this was affirmed, the court citing the rule, often repeated, that findings of fact by the master, concurred in by the circuit judge, will not be disturned on appeal, unless without evidentiary support, or against the clear preponderance of the evidence. Such was very properly found not to be the case here.

The result, in the granting of the alimony, of giving the wife, when her own earnings are also considered, a greater net income than her husband's, while unusual, is justified by the circumstances. Here the wife's income, from her own labors, was $250 a month, but her health was impaired. She had given up a $75 monthly pension, as widow of a veteran, to marry defendant. While the latter's income upon retirement was $238.25 monthly, and an unspecified small amount from other sources, still he owned real estate of the value of $30,000. Considering the relative financial circumstances of the parties the court held that allowances to the wife of $100 monthly alimony and a claim for $774.20 medical expenses incurred during their marriage were proper.

Rescission

Owens v. Sweat[8] was a bill in equity to rescind an agreement,

5. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-606.
6. 225 S.C. 274, 82 S.E. 2d 119 (1954).
7. Levin v. Levin, 68 S.C. 123, 46 S.E. 945 (1903).
8. 86 S.E. 2d 886 (S.C. 1955).

whereby complainant (found to be elderly and ill at the time) conveyed his farm to the defendant upon an alleged consideration of $7,000, and in exchange accepted a conveyance of an undesirable town house and lot (made to complainant's second wife), valued at $2,000, together with a mortgage of $3,000 to the second wife, upon the farm conveyed by the complainant to the defendant. Claim for rescission was based upon fraud, inadequacy of consideration, mental incapacity of the complainant and undue influence practiced upon him by the defendant. [Complainant's motive in the arrangement appears to have been to cut off the dower claim of his first wife upon the farm in question although it is not clear why there should be any question as to this if the complainant were legally divorced from her. Nor was the "clean hands" doctrine, which seems pertinent here, raised or discussed.] The answer was in the form of a general denial and a plea of the Statute of Frauds. The evidence adduced showed the farm in question to be worth from $10,000 to $12,000. Evidence by the complainant of the defendant's parol agreement to reconvey if the former were dissatisfied with the arrangement was admitted. Also admitted in evidence was the fact that, although the $3,000 mortgage on the farm was not due for five years, it had been paid off by the defendant to the complainant's second wife in one year and that the complainant had demanded a reconveyance from the defendant but was put off and finally refused. The master found for the complainant, but required the latter to restore the $3,000 mortgage money to the defendant. This order must properly have required a reconveyance of the town house and lot to completely restore the *status quo*. Upon appeal there was an affirmance. The reviewing court found that the evidence, even that offered by defendant (appellant), showed both undue influence and a fraudulent intent not to reconvey as agreed. The decision is well summarized in the syllabus, as follows:

> In grantor's action to rescind transaction whereby he and grantee had exchanged real estate, evidence of inadequacy of consideration, grantor's mental incapacity, and undue influence exercised by grantee supported finding for grantor.

This view of the court is amply sustained by authorities in both this and other jurisdictions. We are troubled only by the failure to inject and deal with the "clean hands" doctrine, and what happened as to whether or not the second wife was made a party to the action, as she was clearly a necessary party.

Specific Performance

In *White v. Felkel*[9] the purchaser of timber brought an action for specific performance upon the contract, and for damages allegedly resulting from delay and refusal of performance by the seller. The latter's motion to dismiss the claim for damages was denied by the trial court and on appeal this was affirmed. The court quite logically held that there was no inconsistency between the two claims for relief. Since the principal relief sought was based upon the theory of an existing contract, complainant, by seeking merely incidental and ancillary damages growing out of its breach, clearly distinguished his claim from a claim for "general damages" in lieu of performance.[10]

While such "special damages" are allowable in an action for specific performance, in order to provide complete relief between the parties,[11] still the parties here had stipulated that the question of damages, if any, should not be considered by the referee, but should be left to the determination of a jury. The reviewing court appears to have upheld this stipulation, for it also held that exemplary damages were allowable, should the *jury* find a fraudulent breach of contract. The effect of this holding is to treat what is apparently a single cause of action (although the report is not clear) for specific performance and "special damages" as two causes, the former triable in equity, the latter (by agreement of counsel) at law. The result of this feature of the case appears to be to encourage, rather than to avoid, a multiplicity of suits. Nor will equity, as a rule, uphold stipulations which have the effect of ousting its well-established jurisdiction.

Adams v. Willis[12] was a bill for specific performance by a lessee's assignee of a lease with an option to purchase the realty in question for $7,000, during the term of the lease or a renewal thereof, and the lessor's grantee was named as defendant. Specific performance was granted, the court holding that the defendant had constructive notice of the recorded lease and its terms, as well as actual notice. The provision in the lease, that the lessor would notify the lessee of an outside bid to purchase the property and the lessee would have the refusal or option to buy said property, was upheld, the court saying in effect that the lessee's right to purchase the property in question extended throughout the original term of the lease or any renewal thereof under its terms. And the mere fact that the plaintiff refused to purchase

9. 225 S.C. 453, 82 S.E. 2d 813 (1954).
10. McMahon v. McMahon, 122 S.C. 336, 115 S.E. 293 (1922).
11. Taylor v. Highland Park Corporation, 210 S.C. 254, 42 S.E. 2d 335 (1947).
12. 225 S.C. 518, 83 S.E. 2d 171 (1954).

the property for $7,000 during the early part of the original term did not bar him from exercising it later at any time provided for in the option. Sale of the property by the lessor during the early part of the original term, subject to the outstanding lease, and after plaintiff had refused to exercise the option at $7,000, the price offered, did not deprive the plaintiff from his right to exercise the option later on, but within the terms of the option. The court restates several well-founded equity views: that mere enhancement of the value of the land between the time of the contract and that of performance will not justify refusal of specific performance; that the granting or refusal of specific performance, under the circumstances of the case, should not be arbitrary, but requires the exercise of sound judicial discretion; and that the grant of specific performance or not does not depend upon inadequacy of a remedy at law.[13]

Presbyterian Church of James Island v. Pendarvis.[14] Specific performance was sought by a Presbyterian Church, a corporation, against a defendant who had contracted to purchase ninety-nine [99] acres of a tract of land conveyed by an indenture of the year 1713 to certain trustees for the sole use and benefit of every Presbyterian minister chosen by said church (then unincorporated) to be their pastor and for every such minister so chosen by the congregation of said church in perpetual succession. The defendant now resists specific performance on the ground that the plaintiff has no right to alienate said property under the terms of the indenture. The evidence adduced before the master at the trial showed that the church was incorporated under an Act of the General Assembly in 1785 and that the surviving heirs of the original trustees are now long dead.

It was found that from 1873 until 1918 the minister of this church resided in a manse located elsewhere, and purchased by the church for such purpose. It was further found that from 1871 until 1945 the church had been leasing out the tract in question, with other property included in the 1713 indenture, receiving annual rentals therefor; also that from 1889 until 1945, the tract in question had been returned by the church corporation for taxes and that the taxes assessed had been paid. It was further found, as a matter of fact, that the tract in question had been openly diverted from the uses stated in the 1713 indenture, and that for more than fifty years the church corporation had been in uninterrupted possession of this tract; also, that in 1948, upon discovery of the 1713 indenture, the cloud upon the title to said tract, created by the indenture, had been removed

13. Hammond v. Foreman, 48 S.C. 175, 26 S.E. 212 (1896).
14. 86 S.E. 2d 740 (S.C. 1955).

as the result of friendly litigation brought by the church corporation against successor trustees, named for purposes of the litigation, and that there had been no appeal from the decree therein.

Based upon the foregoing findings, the master found that the complainant was entitled to specific performance. This was affirmed by the circuit court on an appeal. The reviewing court reasoned that the ancient trust, long since repudiated, could not now be enforced, and that, if suit were now brought in equity to that end, the trust would be held to be barred. The renting of the land since 1871, said the court, was such a repudiation. The result here would be the same whether the respondent (complainant below) be regarded as a stranger in adverse possession, or, after its incorporation, as a successor trustee.

The view of the court here seems entirely sound and illustrates the carrying out of that public policy which tends toward finding titles marketable where possible, and of the policy of equity to clear up titles, where necessary, in order to make them marketable. Although one who contracts to purchase land should not be required to accept a doubtful title,[15] still where all potentially adverse parties, even those under disabilities, can be bound by the decree, and thus a clear title may be passed, specific performance should be granted.[16]

Trusts

While the *Presbyterian Church* case, *supra,* might have well been reviewed under the topic of "trusts" it seemed more logical to deal with it under "specific performance."

Two other cases involving trusts have been decided by the Supreme Court within the twelve-month period in question.

In *Gardner v. Nash*[17] a mortgagor brought an action to set aside a master's deed to the purchaser at a foreclosure sale. The circuit court found that the defendant bought in this land at about one-fourth of its real value, and contrary to a verbal agreement between the complainant mortgagor and the defendant, to the effect that the latter would bid in the land for complainant, upon terms of repayment agreed to between the two of them. The court found further that, before and during the bidding, complainant circulated the news around (but in defendant's presence) that the defendant was buying in the property for him. The defendant did not deny this statement and the net result was the "chilling" of bids of others present, at least two of whom came to the sale prepared to bid for the property three

15. Trustees of the Episcopal Church of Macon v. Wiley, 2 Hill Eq. 548 (S.C. 1837).
16. Hammassopoulo v. Hammassopoulo, 134 S.C. 54, 131 S.E. 319 (1923).
17. 225 S.C. 303, 82 S.E. 2d 123 (1954).

or four times as much as the defendant bid it in for, but out of consideration for complainant, withheld their bids. The trial court ordered the master's deed set aside, and ordered the complainant to pay the defendant in money the difference between the sum paid by defendant and $499.66, which the court found to be the fair rental value of the land during the occupancy by the defendant. On appeal, the decree below was affirmed, the reviewing court saying, in substance, that courts of equity will cancel conveyances obtained by fraudulent parol misrepresentations or will impose upon legal owners the characters of trustees *ex maleficio*. The Statute of Frauds, said the court, is designed to protect against fraud, and may not be set up as a protection or support of fraud.

This case appears to be entirely sound and in its result is analogous to *Mims v. Chandler*[18] and other South Carolina authorities recognizing purchase money constructive trusts.

Greenwood Lumber Co. v. Cromer, et ux.[19] Injunction was sought against defendants, husband and wife, to prevent their disposing of certain real estate and to impress a trust upon it, and on other property. The complaint alleged that the husband was general manager and secretary of the complainant company, and that he had converted to his own use a large sum of money, lumber and credits of the complainant, the lumber in question having been used by said defendant in the construction of a number of houses owned by him individually, and in partnership with others. The defendant husband, admitted that, upon complainant's insistence, he had conveyed certain real estate to one Anderson as trustee, subject to payment of his debts to the complainant. The wife, too, had conveyed her individual property to the same trustee for the purpose of securing her husband's said debts, but she now contends that such conveyances were made by her, under undue influence, coercion and duress employed by the complainant. She moved the trial court to frame issues out of chancery.[20] The trial court refused to do this but ordered a general reference instead. The principal question here is whether the trial court erred in so doing. The reviewing court affirmed the order of the court below. The matter involves a complicated accounting, said the court, and partakes essentially of equity. The court further stated that parties may not insist, as a matter of right, upon the framing of issues by the trial court under the above cited code section.[21]

18. 21 S.C. 480 (1884).
19. 225 S.C. 375, 82 S.E. 2d 527 (1954).
20. Under CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-1057.
21. See note 20 *supra*.

This matter is one for exercise of discretion by the trial court, and no abuse of discretion was found in this instance.

This view appears to be entirely sound and is the one taken in *Momeier v. McAlister, Inc.*,[22] and other South Carolina decisions.

22. 190 S.C. 529, 3 S.E. 2d 606 (1939).