CORE
Metadata, citation and similar papers at core.ac.uk
Provided by University of Montana School of Law

Montana Law Review

Volume 4
Issue 1 *Spring 1943*

Article 9

January 1943

Equitable Conversion: Its Application to Contracts for the Sale of Land in Montana

Claude W. Stimson

Follow this and additional works at: https://scholarship.law.umt.edu/mlr

Part of the Law Commons

Recommended Citation
Claude W. Stimson, *Equitable Conversion: Its Application to Contracts for the Sale of Land in Montana,* 4 Mont. L. Rev. (1943).
Available at: https://scholarship.law.umt.edu/mlr/vol4/iss1/9

This Note is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

EQUITABLE CONVERSION: ITS APPLICATION TO CONTRACTS FOR THE SALE OF LAND IN MONTANA

In a recent Montana decision[1] the strange and interesting doctrine of equitable conversion was applied with new vigor and expanded scope. The litigation grew out of an attempt by Custer County to tax land which was in the process of being transferred by the plaintiff owner to the United States. The matter to be determined was the ownership of this land for purposes of taxation, on the first Monday in March of 1939, that day being assessment day. On April 28, 1938, the plaintiff had granted to the United States a written option to purchase the land for a consideration of $53,185.37. The mode of acceptance of the option by the United States was to be the mailing or telegraphing of acceptance to the plaintiff within six months of the date of the option. It was further provided that the United States should have a reasonable time thereafter within which to examine the abstract of title which was to be furnished by the vendor. Other provisions arranged for acquisition of title by condemnation in the event the United States should decide that the title was not satisfactory. It was also provided that the United States, after it had accepted the option, was to have the right of possession for the purpose of developing and improving the land; and that the United States should have the right to enter and remove any materials, equipment or structures placed thereon, in the event title to the land should not vest in the United States. It was agreed that the land was to become the property of the United States "upon the consummation of the contemplated purchase, but otherwise shall remain the property of and be returned to" the plaintiff. The United States was authorized to pay the taxes and deduct them from the purchase price.[2] If the property should be damaged by fire, the loss was to fall upon the plaintiff, and the United States had the right to refuse to accept conveyance of title. Plaintiff was not to receive the purchase price until title was approved by a duly authorized representative of the United States.

On June 17, 1938, the United States accepted the option, and immediately entered into possession and made extensive improvements. From that day forward the plaintiff was not

[1]Calvin v. Custer County (1940) 111 Mont. 162, 107 P (2d) 134.

[2]If this provision refers to taxes which may be assessed at any time prior to passing of title to the United States, it suggests that the parties either had no thought of an equitable conversion, or that they intended that there be no conversion until title was conveyed.

permitted to use the land or receive any benefit from it. After the plaintiff had corrected several irregularities in the chain of title, the deed to the United States was executed and delivered on November 15, 1939.

The United States, under protest, paid the tax based upon the assessment as of the first Monday in March, 1939. It assigned to the plaintiff its claim to recover this tax.

The Montana Court, speaking through Mr. Justice Angstman, held that the equitable title or estate was in the United States on assessment day; and hence, in accordance with the constitution of Montana,[3] the property was exempt from taxation.

Before commenting on the procedure by which the Court hurdled the bars which seemed to stand in the way, it may be useful to state briefly the generally accepted view of the meaning of the doctrine of equitable conversion and the occasion for its application.

"Equitable conversion" is said to be a change in the nature of property, whereby realty becomes personalty, or personalty becomes realty.[4] This alteration in the nature of property occurs, of course, only in contemplation of law.[5] The doctrine is applied, presumably, only for the purpose of promoting justice. Contracts of sale[6] and positive directions in wills[7] are the common occasions when courts invoke the equitable conversion doctrine. This comment is concerned with the former.

The courts, when they invoke this doctrine, use phrases and statements which have come to be accepted as expressing what happens and why. "Equity regards as done that which ought to be done."[8] If parties have entered into a contract for the purchase and sale of a specified tract of land, title to pass at a later date, courts often look at the transaction as

[3] MONT. CONST. Art XII, §2: ". . property of the United States . . . shall be exempt from taxation."

[4] Beaver v. Ross (1908) 140 Ia. 154, 118 N. W. 287, 289, 20 L. R. A. (N. S.) 65, 17 Ann. Cas. 640; Bennett v. Bennett (1916) 202 Ill. App. 364; Lockner v. Van Bebber (1936) 364 Ill. 636, 5 N. E. (2d) 460, 461; Woodward v. Ball (1924) 188 N. C. 505, 125 S. E. 10, 11.

[5] Yerkes v. Yerkes (1901) 200 Pa. 419, 50 A. 186.

[6] In re Maguire's Estate (1937) 251 App. Div. 337, 296 N. Y. S. 528, 531; Ingraham v. Chandler (1917) 179 Ia. 304, 161 N. W. 434, 435, L. R. A. 1917D 713; Clapp v. Tower (1903) 11 N. D. 556, 93 N. W. 862, 863.

[7] In re Dodge's Estate (1929) 207 Ia. 374, 223 N. W. 106, 110; In re Jackson's Estate (1934) 217 Ia. 1046, 252 N. W. 775, 91 A. L. R. 937; In re Potter's Estate (1938) 4 N. Y. S. (2d) 828, 831, 167 Misc. 848

[8] Geiger v. Bitzer (1909) 80 Ohio St. 65, 88 N. E. 134, 22 L. R. A. (N. S.) 285, 17 Ann. Cas. 151.

already completed, the buyer being the equitable owner of the land, and the seller the owner of the money which is to be paid for the land. The circumstances which make possible this "conversion" will be considered in greater detail later. In general, the terms of the agreement must be such that the contract is specifically enforcible against the purchaser. In a situation where the vendor can not specifically enforce the contract because of a defect in his title, cases in general hold that conversion does not take place; or, if it does take place, it does so only after the defect has been cured.[9] A few cases have held that, in the event of default by one of the parties, there is a "reconversion" to the original status.[10]

Equitable conversion is said to rest upon the right to specific performance.[11] And the unfortunate doctrine of "mutuality of remedy" has been applied by many courts in laying the foundation for specific performance.[12] The so-called mutuality rule has been enacted by statute in Montana.[13] These matters will be treated later insofar as they are relevant to the Montana case, which will now be considered in detail.

If the equitable title and the legal title to property are in different persons, it is the location of the equitable title which determines the subject of taxation. In approving this view, the Montana Court cites an earlier Montana opinion: "It is the situation or character of the beneficial owner, the holder of the equitable title or estate, and not that of the holder of the legal title, which determines the question of exemption from taxation under our constitutional provisions and those of like import."[14]

"The ownership of the equitable estate is regarded by

[9]Ten Eyck v. Manning (1893) 52 N. J. Eq. 47, 27 A. 900; Norris v. Fox (1891) C. C., N. D. Mo., E. D., 45 F. 406; Verney v. Dodd (1924) 96 N. J. Eq. 129, 125 A. 389; 13 Colum L. Rev. 369, 382.

[10]Williams v. Haddock (1895) 145 N. Y. 144, 39 N. E. 825; Wells v. Smith (1833) 2 Edw. (N. Y.) 78 [aff. 7 Paige 22].

[11]"The rule is uniform, we think, that, where a valid and binding contract of sale of land has been entered into, such as a court of equity will specifically enforce against an unwilling purchaser, the contract operates as a conversion." Clapp v. Tower *supra* note 6, 864. See 13 Colum. L. Rev. 369, 386; 40 Harv. L. Rev. 476, 480.

[12]58 C. J. 867; Templeton v. Williard (1928) 83 Mont. 317, 321, 272 P. 522.

[13]R. C. M. 1935, §8716. See Fiedler, Inc. v. Coast Finance Co. (1941) 129 N. J. Eq. 161, 18 A. (2d) 268, 271, 135 A. L. R. 273. A vendor, as well as a vendee, may maintain action for specific performance of contract for sale of realty on theory of "mutuality", under which remedy obtainable by one party is also obtainable by the other. Rice v. Griffith (1940) 144 S. W. (2d) 837, 842.

[14]Town of Cascade v. County of Cascade (1926) 75 Mont. 304, 243 P. 806. See Kern v. Robertson (1932) 92 Mont. 283, 12 P. (2d) 565, 567.

equity as the real ownership; and the legal estate is, as has been said, no more than the shadow always following the equitable estate, which is the substance.'"[15]

The theory of the Montana Court is that the equitable title to the land in question was in the United States on assessment day, the first Monday of March, 1939. What possible obstructions stand in the way of this theory?

In the first place, some of the Montana decisions on forfeiture, in contracts of sale where the purchaser has been unable to complete his payments, and a "time is of the essence" clause has been included, indicate no thought of applying an equitable conversion doctrine. The Court applies contract law, and in doing so it has enforced the forfeiture provisions in a group of leading decisions,[16] despite the statutory provision for relief in case of forfeiture.[17] Justice Angstman, in a case involving a large forfeiture of payments made on a contract for the purchase of land, says that "a court may not set aside the deliberate contracts of parties because time has denominated that the obligation of one of the parties was onerous or unprofitable.'"[18]

Despite this group of decisions, there are Montana cases recognizing the doctrine of equitable conversion. Assuming that the doctrine is to be applied in the present case, when did the conversion take place?

A Montana decision on the point[19] would indicate that the option entered into on April 28, 1938, between the plaintiff and the United States was not an agreement to sell which could result in equitable conversion.[20] On that day, and during the interval between that day and June 17, 1938, when the United States accepted the option, no sufficient finality or

[15]Title Ins. Co. v. Duffill (1920) 191 Cal. 629, 218 P. 14. See Norton's Ex'rs. v. City of Louisville (1904) 118 Ky. 836, 82 S. W. 621; Montgomery v. Wyman (1889) 130 Ill. 17, 22 N. E. 845; People ex. rel. Williamson County Collector v. City of Toulon (1921) 300 Ill. 408, 133 N. E. 707; Ellsworth College v. Emmett County (1912) 156 Ia. 52, 135 N. W. 594, 42 L. R. A. (N. S.) 530.

[16]Fratt v. Daniels-Jones Co. (1913) 47 Mont. 487, 133 P. 700; Estabrook v. Sonstelie (1930) 86 Mont. 435, 284 P. 147; Clifton v. Willson (1913) 47 Mont. 305, 132 P. 424; Suburban Homes Co. v. North (1914) 50 Mont. 108, 145 P. 2, Ann. Cas. 1917C 81. See Donlan v. Arnold (1914) 48 Mont. 416, 138 P. 775; Edwards v. Muri (1925) 73 Mont. 339, 237 P. 209; Friedrichsen v. Cobb (1929) 84 Mont. 238, 275 P. 267.

[17]R. C. M. 1935, §8658.

[18]Estabrook v. Sonstelie, *supra* note 16, 441.

[19]Kern v. Robertson, *supra* note 14. A sale, an agreement to sell, and an option are clearly distinguished in Ide v. Leiser (1890) 10 Mont. 5, 11, 24 P. 695.

[20]See 13 COLUM. L. REV. 369, 376; TIFFANY REAL PROPERTY (Abridged Ed. 1940) §211, p. 198.

consummation of the transaction existed. Until the latter date it was not certain that the purchase ever would be consummated.

Was an equitable conversion effected at the moment when the option was accepted by the United States? The Montana Court holds that there was. It refers to Pomeroy: "A contract of sale, if all the terms are agreed upon, also operates as a conversion of the property, the vendor becoming a trustee of the estate for the purchaser, and the purchaser a trustee of the purchase-money for the vendor. In order to work a conversion, the contract must be valid and binding, free from inequitable imperfections, and such as a court of equity will specifically enforce against an unwilling purchaser."[21]

It should be noted that Pomeroy says that the contract of sale must be "such as a court of equity will specifically enforce against an unwilling purchaser."[21] Here the plaintiff could not bring suit against the United States in the event the United States chose to be an "unwilling purchaser." Counsel for the defense used this argument, but the Court gave it little consideration. "We think," said the Court, "that in determining in whom the equitable interest vested we must treat the United States as if it were a private person or corporation, amenable to suit."[22]

The Court cites no precedent to support its position; but the view is in harmony with cases in which it has been held that the United States or a state has capacity to act as a trustee[23] and to enter into contracts,[24] even though it can not be sued without its consent. Reasoning by analogy, it would seem that the United States might be treated here as though it were a private corporation amenable to suit. If equitable conversion would occur under the general circumstances of this case, the fact that the United States is the purchaser should not call for a different holding.

Apparently, too, the Court feels that the heart of equitable conversion is the consummation—the settling down into a final state of equilibrium—of the terms-making or bargaining of the parties. Such an equilibrium was attained at the moment when the United States accepted the option. This view would perhaps associate specific performance, conditioned upon mutuality of remedy, with equitable conversion;

[21]POMEROY EQUITY JURIS. (5th Ed. 1935) §1161, p. 479.
[22]Calvin v. Custer County, *supra* note 1, 168.
[23]Appeal of Yale College (1896) 67 Conn. 237, 34 A. 1036; Bedford v. Bedford's Adm'r. (1896) 99 Ky. 273, 35 S. W. 926.
[24]Dickinson v. United States (1878) 125 Mass. 311, 314.

but it would hold that this association is not essential. This Montana view is interesting and has much to be said in its favor. From the standpoint of every-day common sense, the bargain between the plaintiff and the United States was effectuated on the day when the option was accepted. The property was equitably converted. Why insist upon any formal rule requiring that the purchaser be a party amenable to suit by the plaintiff?

It is of interest, and perhaps significant, that a Texas case,[25] decided three years earlier than the principal case, held that equitable conversion occurred in a contract for the sale of land to the United States, with no reference to the fact that the United States was not amenable to suit.

A further implication of the Montana view of the doctrine of equitable conversion is also found in the Texas case: "We have concluded that the definite offer of the owners to sell the lands, and the definite acceptance of the offer of sale by the United States, to purchase on specified terms, though modified in some unimportant features of the offer, but on terms enforcible at law on either side, equitable conversion was then complete by reason of the sale, regardless of formalities to be performed in carrying out the contract."[26]

In the principal case, as in the Texas case, the Court refuses to concern itself with such details as the undertaking of the vendor to furnish a satisfactory abstract of title and the provision that the United States could not have been compelled to accept the title if it was not satisfactory. The Court points out that a purchaser, in this kind of contract, will not be permitted to defend on the ground that he is dissatisfied with the title, provided the title is such as to satisfy a reasonable man.[27]

In the minds of the parties in most contracts for the sale of real property there is probably no thought of an equitable conversion as such. The court, after examining the situation, decides whether or not a conversion occurred. Some writers and some courts have maintained, however, that intention of the parties as to when transfer of the property actually occurs should determine the moment of conversion, and that the court acts in accordance with their presumed intention. This view is illustrated in the following excerpts:

[25]Hardcastle et al. v. Sibley et al. (1937) Tex. Civ. App., 107 S. W. (2d) 432.
[26]*Ibid.*, p. 437.
[27]Calvin v. Custer County, *supra* note 1, 168. Support for this view is found in Ogg v. Herman (1924) 71 Mont. 10, 227 P. 476.

"The doctrine of equitable conversion rests on the presumed intention of the owner of the property and on the maxim that equity regards as done what ought to be done."[28]

"The doctrine of equitable conversion is altogether a doctrine of equity, and depends wholly upon the rules of equity. Its real purpose is to give effect to the manifest intent of a testator or vendor, and to treat that as done which by will the testator has directed to be done, or that which, by previous contract with another, both have mutually bound themselves to do."[29]

"The vendor has indicated an intent to convert his real estate into personalty, and the vendee an intent to convert personal estate into real estate, and there is no reason why the intent should not be regarded."[30]

It has been suggested that in a contract of sale, as with other contracts, no general rule can be more just than to attempt to follow the intention of the parties; and that when "by the contract the beneficial incidents of ownership are to pass is the time which the parties must regard as the moment of transfer."[31]

Mr. Justice Stone has criticized such statements:

"The statement which is so frequently made by writers on the subject that equitable conversion by contract arises from the 'presumed intention' of the parties is only another way of saying that it does not rest upon intention at all, but depends rather upon the operation of rules of law, regardless of the intent of the owner."[32]

Whether courts actually try to determine the intentions of the parties, or whether they make conversion depend upon the operation of rules of law without regard to such intentions, it is reasonable to assume that the proximity to a completion of the bargain between the parties is an important underlying factor in the application of the doctrine of equitable conversion. An examination of the contract of sale in the Montana case indicates that some of the terms are in harmony with the view that the parties considered their transaction as consummated, while other terms could be cited as evidence to the contrary.

[28]Rockland-Rockport Lime Co. v. Leary (1911) 203 N. Y. 469, 480, 97 N. E. 43.
[29]Ingraham v. Chandler (1917) *supra* note 6, 306, 307.
See Clapp v. Tower, *supra* note 6.
[30]Williston, in 9 HARV. L. REV. 106, 117.
[31]*Ibid.*, pp. 120-21.
[32]13 COLUM L. REV. 369, 371.

The provision that the United States, after accepting the option, was to have the right of possession for the purpose of developing the project area, suggests a completed transaction. But the further provision that in the event title to the land should not become vested in the United States, the United States was to have the right to enter upon and remove all equipment, structures, and other property, indicates the possibility of a failure of the conveyance. The Montana Court seems to emphasize the former provision. It contrasts the facts of the situation with those of a Georgia case[33] cited by the defendants: "That case is distinguishable in that there the vendors, and not the vendees, had the right to the possession of the land and to the use thereof during the period in question."[34]

Another provision of the contract which raises some uncertainty as to whether the transaction was really consummated or not was the fire-loss clause. Such loss was to fall upon the vendor, and the United States had the right to refuse to accept conveyance of title; or, if it elected to do so, it could accept conveyance subject to an equitable adjustment of the purchase price. If this provision means what it appears to mean—namely, that the vendor was to bear the risk of loss until the deed was given to the United States—it suggests that the parties did not consider the transaction as in any reasonable sense final.[35] And it should be noted that the vendor was to bear the fire risk even though possession of the property was to pass to the United States. Such arrangement is unusual.[36] Pomeroy points out that many jurisdictions have adopted the rule that the "loss is placed on the purchaser if, by the terms of the contract, the equitable or beneficial ownership has passed to the purchaser and if the loss is not due to a fault of the vendor and the vendor at the time of the loss is not in default and is able to convey a good title."[37]

A remaining point of special interest in the Montana case is the use of the "relation" doctrine. The Court says: "The subsequent exhibition of the vendor's title relates back to the date of the execution of the contract."[38]

[33]Jones v. Morse Bros. Lumber Co. (1931) 171 Ga. 753, 156 S. E. 587.
[34]Calvin v. Custer County, *supra* note 1, 170.
[35]See the view expressed by George L. Clark, 31 HARV. L. REV. 286.
[36]TIFFANY REAL PROPERTY (Enlarged Ed. 1920) I, §126, p. 461.
[37]See POMEROY EQUITY JURIS, *supra* §1161 a, p. 482; §1406, pp. 1049-50; 13 COLUM. L. REV. 369, 370, 385; 33 HARV. L. REV. 827. See Bautz v. Kuhworth (1869) 1 Mont. 133.
[38]Calvin v. Custer County *supra* note 1, 168-69.

Earlier Montana cases have been hesitant about applying this doctrine.[39] In one case the Court refused to let the relation doctrine deprive a widow of her dower interest. The doctrine was said to be a "fiction of law, applied by courts of equity in exceptional cases to sustain a conveyance which would otherwise fail of its purpose, and thus defeat the intention of the parties."[40]

These early Montana cases, which denied the application of the relation doctrine, have a logical basis for their holding. The doctrine is a legal fiction which is unnecessary and unfortunate.[41] Conversion either occurs or it does not occur, and circumstances at the time when the contract comes into existence should be the determining factors. It should not be necessary to judge by some future event whether or not conversion occurs in the present. To hold otherwise is not only illogical; it may injure persons who have acquired rights in the meantime.

A consideration of the doctrine of equitable conversion and the Montana case has served to emphasize the conclusion that equitable conversion is a nebulous and uncertain doctrine. To say that equity considers as done that which ought to be done is, strictly speaking, to say no more than that equity regards that as done which was agreed or directed to be done at the time settled upon for performance.[42] It has been said that the shadowy doctrine of equitable conversion has no substance except as it may be brought in as a "legal reason" for effecting some practical end, such as preventing a vendor from conveying away the land before arrival of the time for the contract purchaser to be given a deed.[43]

If courts insist upon invoking the doctrine, however, the Montana case is probably a proper one for its application. The result attained accords with our sense of justice, in that the parties appear to have reached a point of almost complete finality in their transaction when the contract of sale was signed. The United States received practically all of the benefits of an owner; and the vendor retained only the legal title and the right to receive the purchase price. Furthermore, if a satisfactory title was not procured for the United States, the United States could obtain the property by exercising the

[39]Chadwick v. Tatem (1890) 9 Mont. 354, 365, 23 P. 729; Tyler v. Tyler (1914) 50 Mont. 65, 73, 144 P. 1090.
[40]Tyler v. Tyler, *supra* note 39, 73
[41]See 13 COLUM. L. REV. 369, 377.
[42]31 HARV. L. REV. 285n.
[43]*Ibid.*, 285.

right of eminent domain. That such was contemplated is borne out by the contract provision that if the United States determines the title to be unsatisfactory it may acquire title by condemnation, the vendor agreeing to accept the price named in the contract as the proper amount to be paid to him for all resulting damages.

—Claude W. Stimson.

DUTY VERSUS PROXIMATE CAUSE IN THE LAW OF NEGLIGENCE—A COMPARATIVE STUDY

In the law of tort liability, what will be the attitude of the Montana Supreme Court where defendant's negligent conduct threatens class A with unreasonable risk of harm, and injury results instead to B, who is a member of a class outside the zone of any apparent danger? Such an inquiry is suggested by the leading case of *Mize* v. *Rocky Mountain Bell Telephone Company.*[1] This case, decided by Justice Holloway in 1909, has been freely cited in later cases in Montana. In the meantime, Justice Cardozo has decided the much discussed case of *Palsgraf* v. *Long Island Railway Company*[2] in the New York Courts. The present inquiry is directed to an examination and comparison of the *ratio decidendi* of these and related cases.

In *Mize* v. *Rocky Mountain Bell Telephone Company,* plaintiff's intestate (not a trespasser) was killed while working in a field some ten miles from a city by coming in contact with a fence wire. The wire fence had been charged with electricity by means of the wire of an electric power company, which in falling upon a telephone wire in the streets of the city, charged the latter, and it in turn transferred the current through a guy wire to the fence wire. The Court held that plaintiff might recover against both the power company and the telephone company because (1) a legal duty was owed the deceased and (2) the negligence of the defendant power company was the proximate cause of the death. The Court found a "duty enjoined by the rule which requires everyone to so use his property as not to injure another." Further, the Court held that electric companies are bound to use reasonable care in the maintenance of their wires along streets and highways for the protection of persons under the same rule which makes the owner of a vicious animal liable for the damage it does if negligently allowed to escape.

[1]38 Mont. 521, 100 P. 971, 129 Am. St. Rep. 659, 16 Ann. Cas. 1189.
[2](1928) 248 N. Y. 339, 162 N. E. 99, 59 A. L. R. 1253.