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Judgment in Rem - Decree Vesting Title to Realty

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JUDGMENT IN REM—DECREE VESTING TITLE TO REALTY—Plaintiff contracted to purchase realty and when the defendant refused to convey the property he was formally placed in default and suit instituted for specific performance. The district court ordered the defendant to transfer title to the property and the Orleans Court of Appeal in affirming *held* that if the defendant refused to transfer title, "then the judgment itself will constitute title." *Bonfield v. Tichenor,* 189 So. 635 (La. App. 1939).

Specific performance is a doctrine that developed under the common law maxim *aequitas agit in personam;*[1] but this old maxim has been giving ground rapidly under modern statutory developments.[2] In decrees for the specific performance of contracts for the conveyance of realty, court orders were originally enforced by threats of imprisonment or sequestration of the defendant's property if he did not personally convey the land.[3] Today a great majority of states have so-called *in rem* statutes falling into two general categories. The first type provides that some functionary of the court, generally called a commissioner or master, be appointed to execute and deliver a conveyance of the property.[4] The second type provides either that, if the defendant should refuse or neglect to comply with a decree requiring him to make a conveyance, such decree should operate *ex proprio vigore* to create, transfer, or vest the intended right, title or interest in the proper party; or simply that the court should have power to vest title automatically and instantly by its decree.[5] Many jurisdictions have broadened their legislation so as to in-

1. For an elaborate discussion of this maxim see 1 Lawrence, Equity Jurisprudence (1929) 96-108, §§ 63-72.

2. Huston, The Enforcement of Decrees in Equity (1915) presents an excellent treatise on the history and operation of these statutes.

3. McClintock, Handbook of Equity (1936) 19-23, §§ 16-17; Walsh, A Treatise on Equity (1930) 45-49, § 10.

4. Ark. Civ. Code Ann. (Crawford, 1934) § 428; Ill. Rev. Stat. Ann. (Smith-Hurd, 1935) c. 22, § 46; Ind. Stat. Ann. (Burns, 1933) § 3-1001; Iowa Code (1935) § 11613; Md. Ann. Code (Bagby, 1924) art. 16, § 98; Pa. Stat. (Purdon, 1936) tit. 21, § 53; R. I. Gen. Laws (1923) § 4956; Va. Code Ann. (Michie, 1930) § 6296; Wash. Rev. Stat. Ann. (Remington, 1932) § 605; Wis. Stat. (1935) § 269.07.

This type of statute is also found in England. See Huston, supra note 2, at 13-20.

5. Ala. Code Ann. (Michie, 1928) § 6850; Ariz. Rev. Code Ann. (Struckmeyer, 1928) § 3837; Conn. Gen. Stat. (1930) § 5455; Fla. Com. Gen. Laws Ann. (Skillman, 1927) § 4952; Ga. Code (1933) § 37-1202; Me. Rev. Stat. (1930) c. 123, § 15; Mass. Ann. Laws (1933) c. 183, § 43; Mich. Comp. Laws (1929) § 14522; Mo. Stat. Ann. (1932) § 1089; Neb. Comp. Stat. (1929) § 20-1304; N. C. Code Ann. (Michie, 1935) § 608; Ohio Gen. Code Ann. (Page, 1926) § 11590; Tenn. Code Ann. (Williams, 1934) § 10594; Tex. Ann. Rev. Civ. Stat. (Vernon, 1938) art. 2214; Vt. Pub. Laws (1933) § 1320; W. Va. Code Ann. (Michie, 1932) § 3761; Wyo. Rev. Stat. Ann. (Courtright, 1931) § 89-2211.

clude both types, thus presenting their courts with two methods of enforcing their decrees.[6]

Louisiana is probably the only state in which title to real estate is vested by judicial decree without the aid of an *in rem* statute. The principal case is in accord with a series of Louisiana decisions which have established the power of our courts to frame their judgments so as to be self-executory, transferring the title of realty from the defendant to the plaintiff without any conveyance or action on the part of the former.[7]

In Louisiana the civil law is the general source of jurisprudence and the dual system of courts, that is, common law and chancery, has never prevailed. Nor have the limitations of the common law equity maxims weighed very heavily upon the discretion of Louisiana courts.[8] These facts may account for the practical approach to this problem, whereby the Louisiana courts have asserted an inherent, independent power to grant *in rem* relief. In the leading case of *Dey v. Nelken*,[9] the Supreme Court of Louisiana, in recognizing this doctrine, declared, "There is no question but that, where the obligation is 'to do,' the one upon whom the obligation rests can be constrained to a legal performance not personally, but by the court's recognition of the right, and, in the event of his refusal to execute specific performance, by decreeing that the judgment shall be the title."

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6. Kan. Civ. Code Ann. (Dassler, 1931) c. 83, § 1; Miss. Code Ann. (1930) § 456; Nev. Comp. Laws (Hillyer, 1929) § 8797; N. M. Stat. Ann. (Courtright, 1929) § 117-117; Okla. Stat. Ann. (1936) tit. 12, § 687.

7. Mason v. Benedict, 43 La. Ann. 397, 8 So. 930 (1891); Dey v. Nelken, 131 La. 154, 59 So. 104 (1912); Kinberger v. Drouet, 149 La. 986, 90 So. 367 (1922). In this last named case the court decreed that ". . . upon her failure, or refusal to accept said tender [of the purchase price], and to execute and deliver said deed to the plantiff . . . within said delay, then it is ordered that this decree shall stand as a title translative of said property. . . ." (149 La. at 1000, 90 So. at 372.)

8. "Of the eighty-four cases which have invoked Article 21 of the three Louisiana Civil Codes, the majority—the very great majority—have applied this codal provision in exactly the manner intended by the redactors. In such cases, not only has there been no adoption of the principles of Anglo-American equity, but there has been no reference whatever thereto. In four of the cases in which this codal provision was invoked, the supreme court held expressly that equity precedents were not controlling, and refused to adopt them." Daggett, Dainow, Hebert, McMahon, A Reappraisal Appraised: A Brief for the Civil Law of Louisiana (1937) 12 Tulane L. Rev. 12, 30.

See also LeBlanc v. New Orleans, 138 La. 243, 70 So. 212 (1915). Cf. Haas, Does Equity as it Prevails in Common Law Jurisdictions Obtain in the Civil Law State of Louisiana? (1928) 62 Am. L. Rev. 430.

9. 131 La. 154, 158, 59 So. 104, 106 (1912).