1895

Equitable Assignments of Real Property with Special Reference to New York

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EQUITABLE ASSIGNMENTS OF REAL PROPERTY,
with special reference to NEW YORK

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THESIS presented by
WILLIAM PATCH BELDEN
for the degree of
BACHELOR OF LAW

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CORNELL UNIVERSITY SCHOOL OF LAW
1895
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The jurisdiction of equity in this branch of the law is based upon well-known general principles of equitable jurisprudence. It aims to enforce legal rights and protect legal interests where the remedy at law is inadequate and to preserve equitable interests which are not recognized by statute or by the common law. The influence of equity has greatly aided the attainment of justice between the parties in transfers of realty, by modifying the rigid rules and precedents of the law, the severity of which was made more apparent by the conservatism of the courts in administering them. Comparatively untrammeled by precedents, equity inquires into all the facts of the case and administers justice more in accordance with the discretion of the court, than by fixed rules. One of the most important objects of equity is to prevent or remedy fraud.

It disregards the solemn declaration of the Statute of Frauds that all transfers of land, or any interest therein, must be evidenced by some written memorandum, whenever the enforcement of that rule would involve the perpetration of a fraud upon one of the parties. In fact, the prevention of fraud is the main function of equity, and to establish justice between the parties, it enforces agreements which the law would not recognize, and even creates obligations where none were intended by the parties.
The breadth of the subject makes it necessary to confine this discussion to the law of a single State, but it will be found that in nearly all of the branches of the law of Equitable Assignments, New York has followed the general rule, hence the conclusions drawn will be applicable to other to other jurisdictions. The subject will be treated in several divisions, tracing the development of the law, noting the changes that have been made, and stating the rules which now guide the courts in the decision of cases.

1. Assignment of Expectant Estates.

This branch of the subject is of value to the student only as a matter of history, for it is now regulated entirely by statute. But in early history of the State when the rules of common law prevailed, it presented many difficult problems.

There were three classes of expectant estates created by the act of the party, namely, remainders, springing and secondary uses and executory devises; also one class, reversions, arising by operation of law. Each class was governed by its own particular rules which were, in a great measure arbitrary and technical, thus involving the law, in perplexity and obscurity.

At common law remainders were the only class of freehold estates which could be created to commence in possession at a future day, because of the necessity of an immediate livery of seizin. 1. This rule has been broadly construed, so that all contingent estates of inheritance, as well as springing and executory uses, and possibilities coupled with an interest, when the person who is to take upon the happening of the contingency, is ascertained, may be released, devised or assigned like other future estates.

1. 2 Black Com. 166.
in remainder. 2

In equity, the situation was different. All contingent and executory interests could be assigned, if made for a valuable consideration. 3 In Lawrence vs Bayard 4 the Chancellor said, "There never was a doubt that any interest whatever in personal property, or a mere possibility coupled with an interest in real estate was assignable in equity."

Even a bare possibility of an interest which is uncertain, as that of an heir in his ancestor's estate, may become the subject of a valid contract of sale, and if made in good faith and for a valuable consideration, will be enforced by equity when it vests in possession. 5 But as this operates by way of estoppel in enforcing a right of contract, rather than as an assignment, for there is no present interest to convey, it is unnecessary to discuss further the assignment of possibilities.

The Revision of 1829 reduced all expectant estates to substantially the same class, so as to prevent future litigation, on purely technical questions, and made them subject to the same rules of law as estates in possession.

By the provision of this statute, expectant estates are classified as follows. 6

a. Future estates, and
b. Reversions.

These estates are carefully defined, and it is provided in Sec. 42 that expectant estates not these enumerated shall

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2. Jackson vs Waldron, 13 Wend. pp 192-5
3. 4 Kent Com. 262.
4. 7 Paige 70.
6. R.S. 2431 sec. 9. (8 ed.)
be expressly abolished. Sec. 35. declares that expectant estates are descendible, devisable and alienable in the same manner as estates in possession.

In Lawrence vs Bayard (supra.), Chancellor Walworth said that, "by an examination of the revised statutes it will be seen that by the term "expectant estates" the legislature intended to include every present right or interest, either vested or contingent, which may by possibility vest in possession at a future day. The mooted question whether a mere possibility coupled with an interest is capable of being conveyed or assigned at law, is therefore forever put at rest in this State."

The breadth of the statute and the sweeping nature of its changes is still further pointed out in Nicoll vs R.R. Co. 1. "The provisions of the revised statutes, by which expectant estates are made alienable, no doubt covers the same class of interests which before were only assignable in equity. They are now assignable at law as well as in equity."

The question in this case was in regard to the right of the purchaser of land to take advantage of the breach of a condition subsequent in a deed from his grantor to a third party. It was held that this was simply a possibility of reverter and did not constitute an estate. Hence it could not be assigned or transferred and could only be taken advantage of by the grantor or his heirs. Such interests were not even assignable in equity, for that court "will never lend its aid to divest an estate for the breach of a condition subsequent." 2. Thus the rule of the common law no longer exists in this State, and ex-

1. 12 N.Y. p. 133
2. 4 Kent's Com. 130; 8 Page 398.
pectant estates are placed on the same basis as estates in possession, all conveyances whatsoever being reduced to simple grants. The equitable character of such assignments has become merged in the statute and it is unnecessary to pursue the subject farther.

As to mere possibilities, it is well settled that equity will consider and enforce the transfer in good faith and for a valuable consideration of a possible interest afterward accruing in real property. 1.

II. Parol Conveyances.

The enforcement of verbal agreements for the sale of land must always remain a part of the jurisdiction of equity, as long as the Statute of Frauds continues in force. The purpose of the Statute was not to change the common law in regard to the terms of contracts, but to provide written evidence of the existence of the agreement in such a form, that neither party could be injured by the perjury or lapse of memory of the other.

The English statute was substantially adopted in New York in 1787. 2. It now provides in effect that no estate or interest in lands other than leases not exceeding one year, shall be created or assigned unless by operation of law or by a deed or conveyance in writing. 3. That the provision is a wise one is demonstrated by the long continuance of the Statute and its general adoption throughout the country. But it is absolutely binding upon the law courts, which cannot dispense with its provisions though it is clear that one of the parties is thus enabled to practice a fraud upon the other. 4.

This opens a broad field of work for the equity


4. See footnote next page.
courts, whose power to compel specific performances of these contracts when partly performed, is specially preserved. It frequently happens in cases where the parties are ignorant of the law, or where they have absolute confidence in each other, as between members of a family, that a parol agreement will be made for the conveyance of land, and acted upon, until one party discovers that he has an opportunity to take advantage of the other, or the death of one places his rights in the hands of heirs not inclined to fulfill anything short of legal obligations. Then, equity proceeds to enforce the contract to prevent a wrong being done to an innocent party.

There seems to have been some carelessness in the early New York cases in stating the ground upon which equity thus disregards the Statute. It is laid down in several cases as an established rule that a parol agreement in part performed is not within the provisions of the Statute. In another case the opinion is expressed that courts have gone too far in permitting part performance to take the agreement out of the Statute. The inference would naturally follow that if the Statute of Frauds does not apply to such contracts, there must be legal rights which are enforceable, while in reality the courts deal only with the equitable rights arising from the nature of the case.

The matter is more correctly stated in a subsequent case as follows: "The ground upon which this equitable jurisdiction is exercised, although sometimes said to be

4. Baldwin vs Palmer 10 N.Y. 234
1. 4 R.S. 2590 sec. 10
2. Wetmore vs Whits 2 Caines Cases In Error p. 109
Lowry vs Tew 3 Barb Ca. p 413
3. Parkhurst vs Van Cortland 1 John Ch. p. 284
part performance really is to prevent a fraud being practiced by one party upon the other. ¹

Thus the basis of the jurisdiction is equitable fraud, ² and the term 'part performance' will be used only with reference to circumstances which would constitute a fraud upon one of the parties.

In order that a parol conveyance may be enforced, equity requires that it shall be complete, certain and definite in all its parts, that it shall have all the essential elements of a written contract except the memorandum, that it shall be based on clear and satisfactory proof, and that it shall be accompanied by acts of part performance unequivocally referable to the supposed agreement ³.

The difficult question lies in determining what acts of part performance are sufficient to constitute a fraud which will justify equity in enforcing the contract, for the general rule requires that the situation must be equivalent to a fraud unless the contract is fully performed ⁴.

In 1805 it was declared in Wetmore vs White (supra) that there were three acts which were each held by the authorities to be such a degree of part performance as would take the contract out of the statute—money laid out in improvements, possession delivered in pursuance of the agreement, and payment of the consideration money. As all these elements were present in that case, the remark as to the effect of one alone is a mere dictum.

1. Freeman vs Freeman 43 N.Y. 38.
2. Story Eq. Jur sec. 759, Pomeroy III. sec. 1409 & notes
3. Crosdale vs Lanigan, 129 N.Y. 611; Cronkrite vs Cronkrite 94 N.Y. 327; Wiseman vs Lucksinger, 84 N.Y. 38; Lobdell vs Lobdell 36 N.Y. 330; Phillips vs Thompson 1 John Ch 131
4. Malins vs Brown, 4 N.Y. 403; Miller vs Ball 64 N.Y. 286.
In Malins vs Brown (supra), Gardiner Jr. in commenting upon this case said, "It was assumed that the payment of the consideration entitled the party to specific performance. This may be regarded as an unsettled question. It has been decided both ways in England."

But it is now settled in New York, that payment of the consideration alone in cases where an action at law would fully indemnify the party paying, is not sufficient part performance. But it is an important element in determining the equities of the plaintiff. "Taking possession under a parol agreement, however, with the consent of the vendor accompanied with other acts which cannot be recalled so as to place the party taking possession in the same position he was before, has always been held to take the agreement out of the Statute."  

It is not necessary that the improvements should be very extensive, but the cases are decisive that they must be in fulfillment of the parol agreement or in just reliance thereon.

It is asserted by Pomeroy that the important acts which constitute sufficient part performance are, a. Actual open possession of the land; or b. Permanent and valuable improvements thereon; or c. These two combined.

The first and third propositions are well supported in this State, but the New York cases cited to support the second proposition do not maintain it. In Freeman vs Freeman (supra) both the elements of possession and

1. Cagger vs Lansing 43 N.Y. 550; Miller vs Ball 64 N.Y 286
2. Winchell vs Winchell 100 N.Y. 159.
3. Miller vs Ball, Same case as in No. 1 & No. 2
valuable improvements were present, and in Cagger vs Lansing (supra) the only mention of the subject is a slight dictum which does not, however, maintain the proposition.

It is not a point of great importance anyway for as a matter of fact the cases are very rare where valuable improvements are not also accompanied by the elements of possession.

The rules of equity as to parol conveyances are extended to parol leases where the lease is for a length of time sufficient to constitute an interest in land, within the provisions of the Statute of Frauds. Where the consideration had been paid and possession had been taken under the contract for a lease, the contract was enforced according to the principles established by the cases previously cited. It is often a close question to ascertain whether the parol contract is to convey a lease which constitutes an interest in lands, or whether it merely authorizes the doing of an act or series of acts upon the vendor's land, in which case it is termed a license. There has been much litigation on this point and the law is now well settled, but as these cases fall outside of the subject of conveyances, it is unnecessary to consider them.

III. Parol Gifts.

An interesting class of cases has arisen where the conveyance is in the nature of a gift as from father to son. The same general principles apply here as where the agreement constitutes a sale of lands, with additional rules to meet the demands of special cases.

Rhodes vs Rhodes is a good example of this class, and it is also a case of considerable local interest as

1. Dunckel vs Dunckel 141 N.Y. 427
2. 3 Sandf. Ch. 279
all the parties resided in Tompkins Co. Two brothers, Henry and Andrew, received by the will of their father a farm of 200 acres, to be held in common. Andrew being subject to attacks of epilepsy, gave his share to Henry on condition that the latter should take care of him during his lifetime. Andrew lived thirteen years after this, receiving careful attendance from Henry and his family. The other brothers sought to prevent the enforcement of the agreement, because it was by parol. The court said that the services rendered were of such a peculiar character that it was impossible to estimate their value to Andrew by any pecuniary standard, and since it was evident that he did not intend to measure them by any such standard, it was out of the power of the court to compensate Henry in damages. Hence, the case was clearly within the rule which governs courts of equity in carrying parol agreements into effect, when the parties have no adequate remedy at law. There was an additional element in the case, as Henry had taken possession of Andrew's share and made valuable improvements upon it.

The principle is well stated in a subsequent case that "expenditures made upon permanent improvements, with the knowledge of the owner of the land, induced by his promise to the party making the expenditure, to give the land to such party, constitutes in equity a consideration for the promise." In this case the plaintiff brought ejectment against his daughter-in-law, who was residing on land which he had promised to give to her and her husband, and on which they had made valuable improvements.

The answer was a claim for specific performance. It was held that the defendants were entitled to equitable re-

1. Freeman vs Freeman 43 N.Y. p 39.
lief. But after laboriously figuring out a consideration to support a contract, though the whole transaction was merely a gift, the court concluded with the astonishing remark that, "the Statute of Frauds has no bearing upon the case. If the promise reduced to writing could under the circumstances be enforced in equity, it may be although by parol."

The real ground of jurisdiction in these cases, as in parol conveyances, is equitable fraud, and the importance of this line of decisions will be better understood when it is remembered how often such parol agreements are made between members of a family, and how frequently they result at law in defrauding innocent parties, who, relying absolutely on the word of the promisor, are subsequently deprived of their rights by unscrupulous heirs or executors. Equity, acting as the conscience of the law, intervenes to protect the weak and helpless.

IV. Irregular or Defective Legal Assignments.

The litigation which has arisen as the result of stupidity in drafting deeds for the conveyance of real property well illustrates the loss to which parties not familiar with business transactions continually subject themselves in order to save the petty expense of employing a competent lawyer; while the number of suits in which able business men find themselves involved as the result of carelessness in preparing the written memorandum of sale, teaches the importance of vigilance. From the nature of the transaction it is apparent that suits will be brought more frequently to have conveyances set aside on the ground of fraud, than to have them maintained, since ordinarily in the latter case no loss will be sustained by either party which cannot be remedied at law.
Equity does not grant specific performance of contracts as a matter of absolute right, but of sound discretion; and regards carefully the nature of the transaction, the character of the parties and the amount involved, to see whether the case is of sufficient importance to warrant the interference of the court and whether it would by strictly equitable to enforce the contract.¹

As in parol conveyances, the contract must be clear and definite in its terms, and must have been partly executed under circumstances which would constitute a fraud upon complainant without the interference of equity.

The remedy of specific performance in these cases is mutual. The vendor may maintain an action in all cases where the vendee can sue for the enforcement of the agreement². In fact, the vendor has his choice of remedies. He may resort to the equity courts to obtain specific performance, or go to the law courts for the recovery of money damages.³

The vendee is protected from false titles by the general rule that purchasers of real estate are entitled to marketable titles free from encumbrances unless they expressly agree to accept a defective title.⁴

Thus a purchaser seeking to enforce specific performance of an agreement to convey land is not bound to accept an irregular deed.⁵ and equity will relieve him from the operations of fraudulent deeds.⁶

¹ Sherman vs Wright 49 N.Y. 227
² Fry on Spec. Perf. 10; Stone vs Lord 30 N.Y. 60
³ Crary vs Smith 2 N.Y. 60; Brown vs Hall 5 Paige 240; Schroeppe1 vs Hoff, 40 Barb 431.
⁴ Seymour vs Delancy, 90. Ch. 449; Burwell vs Jackson, 9 N.Y. 535; Delavan vs Duncan, 49 N.Y. 485; Vogt vs Williams 120 N.Y. 258.
⁵ Hyatt vs Seeley, 11 N.Y. 52.
But where there is only a slight variation in the description of property, or only a trifling encumbrance on the land, so that the vendor is able to perform his agreement in substance, equity will decree specific performance, but will allow compensation for the encumbrance.

In one case of an agreement to convey land free from encumbrance, defendant rejected the deed because of a small mortgage, which however was satisfied shortly afterwards.

Yet defendant took and kept possession of the land, and this act was held to estop him from setting up the defence of insufficient title to an action for specific performance. Likewise, where there was no fraud or defect but defendant still took advantage of the contract.

If the complainant is ready to take the title subject to any equitable rights of others, defendant cannot evade performance by setting up an inability produced by his dealings with third parties in relation to the land.

Where the instrument includes more land than was intended by the parties, it may be restricted, on the petition of the injured party or of both parties.

Where the conveyance does not include all the land that was agreed upon, the contract may be enlarged upon the same principle as in the other case. This rule also applies when the estate conveyed is less than the parties intended. An interesting case illustrating this principle arose in 1821 before the statute had chang-

6. Hopk. Ch. 143; 2 John Ch. 204.
1. Ten Broeck vs Livingstone, 1 John Ch. 357; Winne vs Reynolds, 6 Paige 407.
2. Vide vs E.R.Co. 20 N.Y. 184.
3. Johnson vs Hathorne, 2 Keyes 476
4. Westvelt vs Matheson, Hoffman, Ch. 37.
5. Galleasie vs Moon, 2 John Ch. 585.
ed the common law rule in regard to conveying estates of inheritance. Defendant conveyed all his right, title and interest in certain real estates to plaintiff, but neglected to use words of inheritance, thus creating only a legal life estate. In an action to reform the deed, it was held that since it was the intention of defendant to create a fee, the court recognized the trust estate in fee created by the original deed, and would decree an adequate legal conveyance in fee.1.

Where the contract provided that the vendor should pay all taxes and reasonable assessments for one year, and he offered a deed executed by himself and wife containing a clause that the vendee should pay the taxes, the latter objected, whereupon the vendor struck out the clause, but the vendee refuses to accept it on the ground that it was not the deed of the vendor and wife, because of the alteration. This was held to be a proper ground of objection and the court decreed the execution of a correct deed.2.

The widow's dower right constitutes an encumbrance upon the title, but where she joined as executrix in the sale of the land, a good title is conveyed, and she is held to look to the purchase money as a substitute for her dower right.3.

In general, equity looks to the conditions existing at the close of the trial and grants relief accordingly. Thus, where by reason of a lis pendens filed in an eject-
ment suit, defendant was unable to execute her contract to convey, but the lis pendens ceased to be operative before the completion of the action for specific performance; it was held that plaintiff was entitled to equitable relief. ¹

The subject of Defective Assignments, it will be observed, is controlled not so much by rules peculiar to itself, as by the broad general rules of equity which the courts adapt to the circumstances of each particular case, and in general, equity will maintain every assignment when such action is necessary to prevent fraud.

V. Equitable Mortgages.

This peculiar method of assigning an interest in lands is derived from the English law. Equitable mortgages arise from the nature of the transaction, or from the acts of the parties, without any express contract for that purpose. Such mortgages are held to be binding upon the parties, their heirs, and all subsequent purchasers or assignees who take with notice of the claim; and since all deeds and mortgages are required to be recorded in this country, so that a purchaser need not look beyond the record for encumbrances, it follows that nothing short of actual notice will suffice to make his claim secondary to the equitable mortgage, which from its nature, cannot be registered.

These mortgages are divided into two classes; Mortgages by deposit of title deeds, and Vendor's liens.

The first class was recognized as a part of the English law in 1783 in the leading case of Russell vs Russell

¹. Haffey vs Lynch 143 N.Y. 241.
2. Bro. Ch. 269.
Though it has been condemned by many eminent jurists, it is now firmly established. This class of mortgages is not generally recognized in the United States, the position of the New York courts being quite exceptional in that respect. But even in this State it is not a subject of much importance, as the practice of depositing title deeds as a security for debt is rarely followed. Hence, it is sufficient merely to state the principle and the cases which uphold it.

It was first applied in 1844 in the case of Rockwell vs Hobby, which well illustrates and defines this class of mortgages. This was a bill in equity asking the sale of lands to pay an advance made by plaintiff's testator, who had paid a bond and mortgage against his mother on this land, and taken from her the title deeds as security. The court held that in the absence of all other proof, the evidence of an advance of money and the finding of title deeds of the borrower, in the possession of the lender, is held to establish an equitable mortgage.

The holding in this case has been so clearly recognized and followed in the dicta and decisions of subsequent cases that there can be no doubt about the doctrine of equitable mortgages by deposit of title deeds being now a part of the settled policy of the New York courts.

The other class of equitable mortgages, known as the vendor's lien, has been more generally adopted. In this

1. Sandf., Ch. 9.
2. 4 Kents Com. 151; Carpenter vs Mining Co. 65 N.Y. 51; Carpenter vs O'Dougherty, 67 Barb. 401; Powers vs Johnson 49 N.Y. 435; Stoodart vs Hart 23 N.Y. 556; Nortarup vs Cross, Selcem's Notes 111; Marquat vs Mar quat 7 How. Pr. 419.
country. It arises without agreement, and exists in every case unless the purchaser can show that, from the nature of the case, it was intended that no lien should arise, as where other security is given. The object of this lien is to furnish the vendor a security for the purchase money of the estate sold. This equitable mortgage is binding upon the vendee and his heirs, and upon all purchasers from the vendee, having notice of its existence.

The subject has been too widely discussed to need further attention here. It is sufficient to state that it has long been recognized by the courts of this State.1

But the courts have declared that neither the vendor’s lien nor equitable mortgage can be set up in law as a legal estate.2

VI. Judicial Sales

Judicial sales, or as they were formally called, Chancery sales, do not fall within the letter or the spirit of the Statute of Frauds, but constitute a peculiar exception to the general law of transferring real property.

The court, acting through its agents, conducts the sale, enforces it by official decrees and guards against the danger of fraud which it was the purpose of the Statute to prevent. No sale thus conducted will be set aside because it is not evidenced by a written memorandum.

The sale is completed when the report of the master or examiner is confirmed by the court, but relates back to the date of sale so as to give good title for the entire term and such confirmation cures all irregularities of the sale.

It was first decided by Lord Hardwicke in Attorney-General vs Day¹ that the Statute of Frauds has no application to judicial sales, but the rule as to what constitutes such a sale, is strictly construed, and the principle is applied only to cases where the sale was ordered by a court of chancery, or was subject to its confirmation and control.

Chancellor Kent, in an early New York case² was inclined to question Lord Hardwicke's ruling as being too broad, and held, in this case that sheriff's sales and auction sales fall within the Statute. The same rule was also applied to a sale by loan officers at auction in a subsequent case.³

No right can accrue to a purchaser at a sheriff's sale without the payment of money,⁴ but if purchasers take possession and make improvements without waiting for the confirmation of the sale, they will not be entitled to indemnity in case the sale is not confirmed.⁵

But the later cases take a different view of sheriff's sales, perhaps because under the Code this is the method the courts usually adopt in ordering sales, as in foreclosure proceedings; and it has been repeatedly held that the Statute of Frauds has no operation in such cases. In Andrews vs Mahoney,⁶ where such a sale was in question, the court said, "It is clearly settled in this State that judicial sales of this kind are not within the Statute of Frauds, and that they are binding upon

¹. 1 Ves. Sr. 220
². Simonds vs Catlin, 2 Caines 64
³. Jackson vs Bull 2 Caines Cases in Error 301.
⁴. Catlin vs Jackson, 8 John 550.
⁵. Requa vs Rea, 2 Paige 339.
⁶. 112 N.Y. 572.
the purchaser without any written memorandum of the terms of sale. The sale is made by the court, through the sheriff, acting as its officer, and strictly speaking there can be no contract. The purchaser could not sue the court and it could not sue him. The sheriff in such case is under no duty to bind himself personally, or to demand that the bidder shall be bound to him personally, and the bidder is under no obligations to bind himself by contract to the sheriff. By bidding he subjects himself to the jurisdiction of the court, and in effect becomes a party to the proceeding, and he may be compelled to complete his purchase by an order of the court, and by its process for contempt if necessary. The statute has no operation in such a case. ¹.

No mention was made here of the early cases on sheriff's sales though those decisions were rendered by Chancellor Kent himself. But this seeming contradiction probably results from the fact that in early times judicial sales were conducted by a referee or a master-in-chancery while now they are conducted by the sheriff.

The vital point in deciding this question is not in reference to what officer has charge of the sale, but as to whether or not it has been ordered by the court, and is subject to its confirmation and control.

In a recent case where a duly appointed receive


². In re Denison 114 N.Y. 621.
of a state bank sold the assets of the bank in pursuance of an order of the Supreme Court, it was held that this was a judicial sale, and the court could compel the specific performance of the contract of sale. No confirmation of the agreement was necessary here to make the sale complete, as the terms of the sale, as authorized and represented by the contract, were expressed in the order. Hence, no further action of the court was needed to consummate the sale.\(^1\) It is not important whether the sale be public or private, only that it be made by the receiver pursuant to the order of the court, thus giving it the character of a judicial sale.

These principles are now settled in New York beyond dispute, and furnish a very satisfactory solution of the difficult problem of dealing with judicial sales of realty.

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1. Sec. p. 622 and cases cited.
VIII. Summary

In conclusion, it may be said that there are very few unsettled questions of law in this subject. The importance of the equitable jurisdiction, in this branch of the law has been explained and illustrated, and it now remains for us to gather from the mass of cases and text-books cited, the general principles on which equity acts. First, and most important of all, it seeks to prevent fraud and establish justice between the parties. In fact, this is the fundamental principle of equitable jurisdiction. But equity requires also that the terms of the contract must be clear and definite, and that it shall have been partly performed. It looks to the spirit, as well as to the letter of the law, and enforces no rule or statute when such action would produce inequitable results.

The results of this investigation may be stated briefly as follows:

1. The exclusive jurisdiction of equity over the assignment of expectant estates has been taken away by statute.

2. Equity will enforce the performance of a verbal contract for the conveyance of real property when such contract has been partly performed under circumstances which would otherwise constitute a fraud upon the complainant.

3. Parol gifts of real property are governed by the same rules, with the additional rule, that under some circumstances, personal services constitute a sufficient part performance of the contract.

4. Equity will sustain defective legal assignments,
whenever their non-enforcement would produce inequitable or unjust results upon one or both parties, which cannot be remedied at law.

5. The doctrine of equitable mortgages is recognized and maintained for the purpose of protecting creditors and vendors.

6. Judicial sales are not within the provisions of the Statute of Frauds, because they are conducted by the court whose main object is to prevent fraud, and the necessity of a written memorandum as a means of enforcing the contract is dispensed with when the party by bidding voluntarily places himself within the jurisdiction of the court.