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Equity

Henry L. McClintock

EQUITY

By HENRY L. MCCLINTOCK*

Insofar as practicable, the arrangement followed by Professors Hilkey and Hall in the review of equity in the survey for 1949-1950, will be followed, but the differences in the subject matter of the equity cases decided during the two periods necessarily requires many changes in that arrangement. During this past year, as during the one preceding it, the Georgia cases dealing with equity have been concerned mainly with the application of established equity principles to various fact situations; there has been substantially no occasion for the consideration of new principles. In this survey only cases which discuss or apply equity principles as such will be considered. Decisions as to the substantive legal rights of the parties are not considered though they may have been rendered in suits for equitable relief.

SPECIFIC PERFORMANCE

Contracts Specifically Enforceable.—Two cases, both decided the same day, considered the question of the certainty of terms required for specific performance of a contract. Neither case discussed whether the requirement in equity differed from that at law. *Hulgan v. Gledhill*[1] held that a contract to build a house for petitioner which did not show the kind of house to be built, nor its value, was too indefinite to be specifically enforced. It would seem to be clear that it was also too indefinite to be valid at law. The court also held that a promise by petitioner that members of the C.C.C. under his direction would perform work for defendant was illegal and that its illegality invalidated the entire contract. *Faulkner v. McKelvey*[2] held that a description of the property as a "brick building known as the Old Post Office Building in Bartow County" was sufficiently certain for specific performance in connection with evidence that vendor owned only one building in that county that answered the description, thus aligning Georgia with those jurisdictions adopting the modern rule that the terms were certain if they could be made certain by evidence.

Ogletree v. Ingram & LeGrand Lumber Co.[3] followed two earlier Georgia cases in holding that a petition for specific enforcement of a contract for the sale of property which did not show the value of the property was demurrable for failing to allege the fairness of the contract, which is essential for specific performance.

Tender by Plaintiff.—*Smith v. Tippins*[4] was a suit for specific performance of a contract made at an administrator's sale. The court held that

*Professor of Law, Walter F. George School of Law, Mercer University; Professor of Law Emeritus, University of Minnesota; Ph.B., 1903, Colorado College; LL.B., 1906, University of Denver; S.J.D., 1924, Harvard University.

1. 207 Ga. 349, 61 S.E.2d 473 (1950).
2. 207 Ga. 354, 61 S.E.2d 479 (1950).
3. 207 Ga. 333, 61 S.E.2d 480 (1950).
4. 207 Ga. 262, 61 S.E.2d 138 (1950).

where the petitioner, purchaser, offered to close the sale within the time required, but the administrator refused because of objection by the heirs, neither the administrator nor the heirs could defeat the relief because of failure to make tender within the required time.

Laches.—Gay v. Radford[5] was a suit by an heir at law to enforce a bond for title given to his ancestor. After holding that the bond created an equitable interest in the land which descended to the heir, the court held that that heir was not chargeable with laches during his minority if no guardian had been appointed for him, because the statute of limitations did not run against a minor, and that a delay of four years after reaching his majority was not laches.

On the other hand, a delay of nine years after the youngest plaintiff had attained majority was held[6] to justify the dismissal of a suit for specific performance of a contract to adopt minor children, where, in the meantime, the alleged promisor had died, thereby depriving defendant of the benefit of his evidence. This case illustrates the principle that laches is not a matter of mere delay, but of delay which prejudices the other party.

Adequate Remedy at Law.—In none of the cases decided this past year has there been any discussion of the principles governing the adequacy of the legal remedy; the court has been content merely to hold the remedy to be inadequate or otherwise under the doctrine of earlier cases cited by it. A petition[7] seeking a lien for labor and materials furnished by a supplier to a subcontractor for the erection of a building, which did not allege that the subcontractor who employed petitioner to do the work was insolvent or a nonresident, failed to show that the remedy against the subcontractor for breach of contract was inadequate so that the petition was properly dismissed against the owner and the general contractor. The cases cited to sustain this ruling turned on the right to the lien, rather than the adequacy of the remedy at law.

In *Ware v. Martin,*[8] the court held that the petition for a share in an estate by an adopted daughter alleged a completed adoption, not a contract to adopt, and, therefore, petitioner had an adequate remedy at law.

Chadwick v. Dolinoff[9] was a suit for specific enforcement of a promise by a former employee not to compete with petitioner for a limited period. The contract contained a provision for liquidated damages in case of its breach. The order of the trial court sustaining a demurrer to the petition was affirmed. The Supreme Court cited in support of its decision several cases sustaining the provision for liquidated damages and others laying down the general principle that there will be no specific performance granted if there is an adequate remedy at law. It further stated that *Wells v. First Nat. Exhibitors' Circuit*[10] did not require a different ruling. In the *Wells* case, the court examined on theory and precedent the question whether a provision for liquidated damages made the remedy at law adequate and

5. 207 Ga. 38, 59 S.E.2d 915 (1950).
6. Hagler v. Hagler, 207 Ga. 239, 60 S.E.2d 378 (1950).
7. Maggi v. Sylvan Circle Apts., Inc. 207 Ga. 580, 63 S.E.2d 368 (1951).
8. 207 Ga. 512, 63 S.E.2d 335 (1951).
9. 207 Ga. 702, 64 S.E.2d 76 (1951).
10. 149 Ga. 200, 99 S.E. 615 (1919).

held, in accord with the great weight of authority, that it did not. The *Chadwick* case can be reconciled with the *Wells* case only on the ground that in the former there was no showing that the remedy at law would have been inadequate even in the absence of the provision for liquidated damages. On that ground the case is in line with the practice of our court to apply rigidly the principle that a petition for equitable relief must show that there is no adequate remedy at law, by alleging facts that show the inadequacy, not merely by alleging it as a conclusion.

PARTITION

A petition for equitable partition and sale, and for an accounting,[11] brought by one cotenant against another, which alleged that defendant had appropriated the proceeds from the land, including those from the sale of timber; that the property could not be equably divided because of the improvements thereon; and that the suit was brought as soon as petitioner learned that the timber had been sold and the cotenant was denying her title was sufficient against a general demurrer based on the grounds of limitations and laches, and adequacy of remedy at law.

RESTRICTIONS ON USE OF PROPERTY

Use of Land:—In two cases decided on the same day, the Supreme Court held that a grantee from a former owner of land who had imposed restrictions on the use of a lot conveyed to defendant could enforce the restriction against the defendant;[12] and that a restrictive covenant on the use of land subsequently leased to defendant could be enforced against defendant.[13] In the former case, the court stated as its reason that the restriction became an easement, or a servitude in the nature of an easement for the benefit of the property subsequently conveyed to petitioner and which accompanied the land into the hands of petitioner, while in the second case the reason assigned was that the defendant-lessee, who had notice of the restriction was in "privity of conscience" with the covenantor. Thus the court relied on the same day on each of the two theories, contract right, or right attached to land, which have been advanced[14] from the time of *Tulk v. Moxhay*[15] to the present time to subject those not parties to the use restriction to its obligations, or to extend to them its benefits. In neither case was there any consideration of the merits of the different theories, and in both cases the result would have been the same whichever theory was adopted. In the *Spencer* case the court also held that a reference in defendant's deed to a plat which, in turn, referred to a recorded list of restrictions, charged defendant with notice of the restrictions, even though the list was not a recordable instrument.

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11. Ballenger v. Houston, 207 Ga. 438, 62 S.E.2d 189 (1950).
12. Spencer v. Poole, 207 Ga. 155, 60 S.E.2d 371 (1950).
13. Langenback v. Mays, 207 Ga. 156, 60 S.E.2d 240 (1950).
14. See Reno, *Enforcement of Equitable Servitudes*, 28 VA. L. REV. 951, 972 ff. (1942).
15. 2 Ph. 774, 1 H. & T. 105, 18 L.J. Ch. 83, 12 L.T. (o.s.) 469, 13 Jur. (o.s.) 89, 41 Eng. Reprint 1143 (1848).

In *Stanley v. Greenfield*,[16] the court held that the fact that defendant had expended $8,000 on the construction of a house which violated a building restriction did not "estop" plaintiff from suing to enjoin the completion of the house in the absence of evidence that plaintiff knew of the construction before he brought suit. The case also held that where the petition prayed for an injunction against the completion of the house, a prayer for general relief did not authorize an injunction against the use of the house in its present condition.

Reformation of Instruments

No Georgia case decided this past year has considered the right to reform a legal instrument. In *Barron v. Darden*[17] it was held that a suit to reform a deed was barred by laches when it was brought 22 years after the execution of the deed and 20 years after it was recorded, and after the death of the parties to it, who alone could testify as to their intent; in the absence of proof as to a scrivener; and after conveyances had been made to third parties.

Rescission and Cancellation of Instruments

Negligence of Petitioner.—A petition to cancel for fraud a contract signed by petitioner who alleged inability to read the instrument and ignorance of its contents is insufficient in the absence of allegations of misrepresentations by the defendant or confidential relations between the parties.[18]

Statement of Opinion.—In a petition to set aside for fraud a release executed by petitioner, and to recover damages for the death of petitioner's husband, allegations that defendant's claim agent falsely stated that defendant was not liable for the death alleged a statement merely as to matters of opinion on which petitioner was not entitled to rely, and, therefore, were insufficient to authorize cancellation.[19]

Duress.—Calhoun v. Dowdy[20] was a suit to cancel for duress a deed conveying land to defendant. The petition alleged that defendant and his mother and step-father colluded to secure the execution of the deed, and that the latter two took petitioner to town to have it executed. When they were crossing a river the other two threatened to throw petitioner into the river if she did not agree to convey the land, and she promised to do so. The deed was executed in the presence of an attorney in the town, but not delivered until the threats were renewed as the parties approached the river on the way home. The court held that a threat to life, in order to constitute duress must be made with apparent ability to carry it out. Here there was no such ability when the deed was executed in the presence of the attorney, but there was when the deed was delivered, and that was enough. There can be no disagreement with the result, but the dictum

16. 207 Ga. 390, 61 S.E.2d 818 (1950).
17. 207 Ga. 350, 61 S.E.2d 497 (1950).
18. Robertson v. Panlos, 208 Ga. 116, 65 S.E.2d 400 (1951).
19. Swofford v. Glaze, 207 Ga. 532, 63 S.E.2d 342 (1951).
20. 207 Ga. 584, 63 S.E.2d 373 (1951).

seems to narrow the scope of the remedy unnecessarily. One who threatens to kill in order to gain by it, should have no consideration from equity merely because the victim was so cowed by the threats that she did not take advantage of an opportunity to expose the threatener.

Parties.—In a suit by a wife to cancel a deed from her to her husband for a one-third interest in a tract of land,[21] a creditor of the husband who did not show the value of the husband's two-thirds interest, nor that there was no other property from which the creditor's debt could be satisfied, was not entitled to intervene in the suit.

Evidence.—In two cases the court held that the evidence as to mental incapacity and great inadequacy of consideration,[22] and as to fraud,[23] was sufficient to sustain verdicts for cancellation. In the latter case it was also held that the evidence showed that grantee took the deed with knowledge of the insanity of grantor so that the guardian was entitled to cancellation without tender or offer of restitution of the consideration.

Petition.—In *Sellers v. Johnson*,[24] the petition was held insufficient to charge fraud under the well-established rule that general allegations of fraud are insufficient; the facts on which they are based must be stated.

Removing Cloud From Title

Petitioner's Title.—Petitioner to remove a cloud from title need establish title only back to the common source, and where the evidence showed such title and that the claimant's only right derived from one given permission by the common source to use the property, petitioner was entitled to relief, though he did not trace his title back to its source.[25]

Mode of Trial.—Where a suit to remove cloud from title was heard by an auditor by consent, and exceptions to the report were overruled by the court and the report made the judgment of the court, the order became the final judgment. Since the suit was originally in equity, it was not necessary to submit to a jury issues of fact raised by the exceptions.[26]

Appointment of Receiver

Suit by Unsecured Creditor.—Two cases decided within the past year have involved the application of Code Section 55-106 providing that a receiver shall not be appointed at the suit of an unsecured creditor, and the recognized exception to it permitting such an appointment in cases where extraordinary circumstances require it. In *United Bond and Warehouse, Inc. v. Jackson*[27] the court held that an unsecured creditor was not entitled to the appointment of a receiver without a showing that a manifest

21. Land O'Lakes Creameries, Inc. v. Crowley, 207 Ga. 515, 63 S.E.2d 215 (1951).
22. Fuller v. Stone, 207 Ga. 355, 61 S.E.2d 467 (1950).
23. Thomas v. Dumas, 207 Ga. 161, 60 S.E.2d 356 (1950).
24. 207 Ga. 644, 63 S.E.2d 904 (1951).
25. Foster v. Adcock, 207 Ga. 201, 60 S.E.2d 334 (1950).
26. Farrar v. Ainsworth, 207 Ga. 185, 60 S.E.2d 366 (1950).
27. 207 Ga. 627, 63 S.E.2d 666 (1951).

wrong was imminent, and a mere showing that property stored in the warehouse would bring more at private sale by a receiver than at a public sale by the warehouseman to discharge his lien is not sufficient. In *Oattis v. West View Corp.*[28] the court held that a showing that a judgment for petitioner against defendants had been set aside solely because it was excessive, and that the individual defendant, who controlled the corporate defendant was selling all of the property of the latter intending to transfer the proceeds to his children so as to render himself and the corporation insolvent did not allege such extraordinary circumstances as to bring the case within the exception. The *United* case was clearly sound, but the allegations of the *Oattis* case, if true, would seem to show that "a manifest wrong" was imminent.

Enjoining Actions at Law

Right to Relief.—One who is in possession of land in good faith cannot, after his claim has been held invalid by the court, have an injunction against a dispossessory suit for the purpose of protecting his claim for reimbursement for payments on encumbrance and for taxes and improvements.[29] It is not clear from this syllabus opinion whether the court is holding that the possessor is not entitled to recover such payments or merely that he cannot retain possession to secure such recovery; none of the cases cited discuss that point. Generally, equity will give to such a possessor a lien to secure repayment of the amount by which his expenditures have benefited the property[30] and such lien would give a right to retain possession.

The payee-endorser of a note with recourse cannot have a suit on the note brought against him by the endorsee enjoined because of an agreement the endorsement was to be without recourse, since equity will not enjoin an action at law on a ground that law would recognize as an equitable defense.[31] Code Section 55-103 is treated as making the equitable defense at law exclusive of the right to sue in equity to enjoin.

Procedure.—A dispossessory proceeding in which there is a counter-affidavit and bond is within Code Section 3-112 allowing a suit to enjoin a pending proceeding to be brought in the county of the pending suit.[32]

Suits to Enjoin Special Proceedings

Condemnation Proceedings.—Since the question of the right to condemn property cannot be raised in the condemnation proceedings, it has to be raised in a suit to enjoin the proceedings.[33] In this case the right to condemn was sustained.

In *Georgia Power Co. v. Fountain*[34] three opinions were written, no

28. 207 Ga. 550, 63 S.E.2d 407 (1951).
29. Graves v. Carter, 208 Ga. 5, 64 S.E.2d 450 (1951).
30. See Note, 31 Col. L. Rev. 1335 (1931).
31. Peavy v. General Sec. Corp. 208 Ga. 82, 65 S.E.2d 149 (1951).
32. West View Corp. v. Thunderbolt Yacht Basin, 208 Ga. 93, 65 S.E.2d 167 (1951).
33. Hagans v. Excelsior Electric Membership Corp., 207 Ga. 53, 60 S.E.2d 162 (1950).
34. 207 Ga. 361, 61 S.E.2d 454 (1950).

one of them commanding the assent of a majority of the court. Three justices held that where petitioner, after his petition in equity to enjoin condemnation proceedings was denied, participated in the proceedings to determine the value, though he refused to accept payment of the award, he was barred by estoppel and election from thereafter pursuing his equitable suit to determine the necessity for the condemnation. One justice concurred in the result on the ground of petitioner's laches. Three justices dissented. The effect of the application of the rule of the first opinion is to force the petitioner either to abandon his claim that there is no right to condemn, or to refrain from participation in the proceedings to award damages, which will result in denying him an opportunity to be heard if the denial of the injunction is affirmed.

Where an injunction *pendente lite* against condemnation proceedings was denied on the pleadings, which merely alleged and denied, respectively, the necessity for the taking, the Supreme Court will not hold that the trial judge abused his discretion in denying the injunction.[35]

Tax Proceedings.—A provision in a municipal charter for contest of tax executions by affidavit of illegality furnishes an adequate remedy so that the executions will not be enjoined for invalidity of the ordinance levying the tax.[36]

Under Code Section 92-7901, an injunction will not lie against the levy or collection of a municipal tax unless the facts clearly require it. It was held in *Kent v. Murphey*[37] that where it appears that the city commissioners acted on a digest of the tax assessors, though one improperly made, does not sustain an injunction in the absence of any showing that the tax will be unequal, unfair or excessive.

Fence Election.—Hughes v. Griner[38] applied the rule that, while equity will declare invalid any fence election where there was a failure to comply with the mandatory requirements such as the filing of the petition and the giving of notice, it will not relieve against mere irregularities unless the result was affected thereby, by refusing relief for failure of the election managers to take the required oath. If the holding of the elections in certain precincts at schools instead of courthouse as required, is sufficient to invalidate the vote of those precincts, it does not invalidate the entire election without a showing that the vote of those precincts affected the result.

Enjoining Prosecution Under Invalid Ordinance

Injury to Property.—In *Moultrie Milk Shed, Inc. v. City of Cairo*[39] the court stated that in two recent cases "we undertook to put at rest all uncertainty as to the circumstances under which equity would enjoin a criminal prosecution. It was there pointed out that an exception to the general rule is when injury to property is threatened, and when this is true, in-

35. Verner v. DeKalb County, 207 Ga. 436, 61 S.E.2d 921 (1950).
36. City of Eatonton v. Peck, 207 Ga. 705, 64 S.E.2d 61 (1951).
37. 207 Ga. 707, 64 S.E.2d 49 (1951).
38. 208 Ga. 47, 65 S.E.2d 24 (1951).
39. 206 Ga. 348, 57 S.E.2d 199 (1950).

junction will lie notwithstanding the fact that in the process a criminal prosecution is enjoined." The fact that four cases have been brought to the Supreme Court during the past year in which this question was involved indicates that the hope expressed in the *Moultrie* case has not been realized. In one of the four cases,[40] the only injury alleged was the fact that petitioner had been arrested twice and other arrests were threatened. There being no showing of injury to property, the injunction was not granted. In the other three cases some property injury was clear and the trial court granted the injunction. The Supreme Court affirmed in one of the cases and reversed in the other two. In *City of East Point v. Minton*[41] the ordinance attacked as denying constitutional rights was one closing a trailer camp operated by petitioner. Arrests had been made. The injunction was affirmed. In *Mayor of Athens v. Co-Op Cab Co.*[42] the ordinance which prohibited taxicabs from cruising for passengers along streets along which a city bus line ran, was attacked as violating the state statute regulating taxicabs. No arrests were alleged to have been made under the ordinance. The two cases were decided on the same day, with the concurrence of all of the justices in each; the injunction in the *East Point* case was affirmed and that in the *Athens* case reversed. Neither case made any reference to the other so the distinction between them was not pointed out by the court. Some of the language might lead to the conclusion that the distinguishing fact was that arrests had been made under one ordinance, but were alleged to have been merely threatened under the other, but that is contrary to the general holding that the remedy at law is more generally adequate after arrests have been made and the invalidity of the ordinance can be determined by a defense to the prosecution following that arrest, which the court followed in the third of the three cases decided a month later. In that case[43] petitioner alleged that he had induced an employee to violate the ordinance to make a test case, and the injunction was reversed on the ground that no reason was shown why he could not have the validity of the ordinance determined in that test case. It seems to be clear from these cases that the rule stated in the *Moultrie Milk Shed* case must be restricted by the further requirement that the injury to property must be one for which the remedy at law is inadequate, a qualification which the court could properly assume would be read into it; and that the petition on which an injunction is based should set out in detail the facts which establish the injury to property, omitting or stressing only lightly the personal injury from arrest, and also detail the facts which make any remedy at law inadequate. Mere averments of conclusions that property will be injured and the remedy at law is inadequate will not suffice.

INJUNCTION AGAINST TORTS

Trespass to Land.—In *Pruitt v. Satterfield*[44] it was held that the petition and evidence sufficiently showed trespass by defendant on petitioner's

40. City of Eatonton v. Peck, 207 Ga. 705, 64 S.E.2d 61 (1951).
41. 207 Ga. 495, 62 S.E.2d 911 (1951).
42. 207 Ga. 505, 62 S.E.2d 906 (1951).
43. City of Bainbridge v. Olan Mills, Inc., 207 Ga. 636, 63 S.E.2d 655 (1951).
44. 207 Ga. 25, 59 S.E.2d 907 (1950).

land so as to entitle the latter to a verdict and an injunction, but not to show any damages. In *Pugh v. Moore*[45] petitioner's showing of the execution of a deed since lost, which conveyed the land to petitioner and another whose whereabouts were unknown, and that the remedy at law would require a multiplicity of suits was held sufficient to sustain a temporary injunction against the cutting of timber.

Magnum v. Millwood[46] held that one who had merely a privilege or right to cut timber on the premises, but not title to the premises nor possession, cannot have an injunction to restrain the cutting of the timber by another. The cases cited to sustain the holding lay down the proposition that one who has not title to, nor possession of, the subject matter is not entitled to an injunction to protect it. This is generally true, but in the case of the contract right to cut timber on the premises of another, there might be a showing of special need for that timber which would entitle petitioner to specific performance of the contract and then he ought to be given an injunction to prevent another from interfering with the performance of the contract. The report of the *Magnum* case shows no attempt to make such a showing so the remedy at law for breach of the right would be adequate.

Obstruction of Easements.—In *Haney v. Sheppard*[47] it was unanimously held, contrary to the language of some earlier decisions, that equity will not grant a mandatory injunction for the removal of obstructions to an alley since the statutory proceedings at law furnish an adequate remedy. Equity may grant relief to prevent a multiplicity of suits but an allegation of three obstructions to the same alley by the same defendant does not show a multiplicity of suits would be necessary since all the obstructions could be removed in one statutory proceeding. In *Thompson v. Hutchins*[48] equitable relief to prevent multiplicity of suits was sustained. The case was distinguished from the *Haney* case in that here the petitioner showed an intent by defendant to take over the road and appropriate it to his own use. One justice dissented. The distinction is a sound one. Multiplicity of suits is more likely to be necessary where there is a showing of a claim of right by defendant, or a purpose to appropriate the property to his own use, than it is when the obstruction is merely casual.

Where the cross action prayed to enjoin a nuisance on defendant's easement, and it had been ruled in the case that the mandatory relief which Code Section 55-110 prohibits was not sought, it was error to give the provisions of that section in the charge to the jury.[49]

Delay in suing to restrain violations of an easement by the construction of buildings thereon, until after the buildings were constructed, though petitioner knew of such construction, was such lack of diligence as to bar the right to enjoin the maintenance of the buildings.[50]

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45. 207 Ga. 453, 62 S.E.2d 153 (1950).
46. 207 Ga. 501, 62 S.E.2d 836 (1951).
47. 207 Ga. 158, 60 S.E.2d 453 (1950).
48. 207 Ga. 226, 60 S.E.2d 455 (1950).
49. Georgia Power Co. v. Green, 207 Ga. 250, 61 S.E.2d 146 (1950).
50. Head v. Crouch, 207 Ga. 648, 63 S.E.2d 647 (1951).

Violations of Zoning Ordinance.—In *Reed v. White*[51] it was held that adjoining property owners may have an injunction against violation of a zoning ordinance and that the allegations of the petition and the evidence sustained a directed verdict for petitioner. The Supreme Court cannot set aside the injunction on the ground that a later ordinance authorized the use, since that court is only an appellate court.

A resident of a zoned district can sue to enjoin the violation of a zoning ordinance on the claim that an amendment of the ordinance was invalid without being relegated to certiorari, since the latter will not lie where the attack is on the validity of the ordinance.[52]

Accounting

A petition which alleged that petitioner was a tenant at will under an agreement by which he was to pay a monthly rental at the termination of his tenancy, and that there should be credited against the rent then due all expenditures made by the tenant for improvements and repairs on the premises, with an itemized statement of the amount of such expenditures, was sufficient to sustain a right to an accounting in equity to prevent a multiplicity of suits, under Code Section 37-301.[53]

Discovery

A petition for discovery in aid of a condemnation suit under Code Section 38-1011, does not show that the remedy at law is inadequate where it does not show that the evidence sought is necessary, not merely convenient or beneficial.[54]

Enforcement of Equitable Decrees

Contempt Proceedings.—An order committing for contempt for failure to pay alimony will not be reversed on ground nonpayment was not wilful, where the record does not show conclusively that defendant will be unable to comply with the order.[55]

Ancillary Injunction.—It was error in divorce proceedings to enjoin the husband from disposing of his property pending the final decree where there was no showing that the husband had any intent to make such disposition.[56]

Subrogation.—A possessor in good faith, but without title, cannot be subrogated to liens for taxes and encumbrances paid by him, since he was

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51. 207 Ga. 623, 63 S.E.2d 597 (1951).
52. Hardin v. Croft, 207 Ga. 115, 60 S.E.2d 395 (1950).
53. West View Corp. v. Thunderbolt Yacht Basin, 208 Ga. 93, 65 S.E.2d 167 (1951).
54. Georgia Power Co. v. Owen, 207 Ga. 178, 60 S.E.2d 436 (1950).
55. Simmons v. Simmons, 208 Ga. 51, 64 S.E.2d 896 (1951).
56. Brannen v. Brannen, 208 Ga. 88, 65 S.E.2d 161 (1951).

a volunteer in making the payments, having no interest in the property to protect.[57] This holding is contrary to the modern tendency to give more liberal interpretation to the right to subrogation.

Review.—In a suit for partition, a cross bill based on an agreement giving defendant the right to purchase the property does not make the case one which can be reviewed in the Supreme Court.[58] Duckworth, C. J., dissented on the ground that the cross action gave the Supreme Court jurisdiction even though the allegations were not sufficient to warrant relief.

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57. Graves v. Carter, 208 Ga. 5, 64 S.E.2d 450 (1951).
58. Alderman v. Crenshaw, 208 Ga. 71, 65 S.E.2d 178 (1951).