

it is not within the province of a court of equity to act as a court of review as respects alleged errors of a court of law. *Tilton v. Cofield*, 93 U. S. 163. Nor does it make any difference that there is here involved a federal question, for the decision of the court of errors and appeals upon such question is reviewable only by the supreme court of the United States.

The motion for an injunction must be denied. But we are not prepared to say that this bill may not be available to the complainant to regulate the mutual use of the premises by the two railroad companies in the exercise of their respective franchises, and the motion to dismiss will be denied. And now, July 12, 1892, the motion for an injunction is overruled, and the restraining order is dissolved. The motion to dismiss the bill is denied.

---

MARR *et al.* v. SHAW.

(Circuit Court, D. Minnesota. 1892.)

1. SPECIFIC PERFORMANCE—REQUISITES OF CONTRACT—EVIDENCE.

Specific performance of an alleged oral contract to convey land, when the proof of such contract is vague, uncertain, and fragmentary, will not be enforced 20 years after the alleged date thereof, and when the relation of the parties and surrounding circumstances rebut the presumption of the existence of such contract.

2. SAME—WHEN DECREED—DISCRETION OF COURT.

Specific performance of a contract for the sale of land rests in the discretion of the court, and will not be decreed when it would work a hardship or injustice to either party. The parties, in such a case, may be left to their remedies at law.

3. SAME—IMPROVEMENTS—EQUITIES.

Defendant bought a farm in order to secure a home for her indigent brother and his family, taking the deed in her own name. He took possession, and lived thereon for many years, until his death, making some improvements, but in the mean time defendant advanced him money far exceeding the value thereof. *Held*, in a suit by his widow for specific performance of an alleged oral contract to sell the farm to deceased, that there was no equity arising in complainant's favor because of the improvements.

4. VENDOR AND PURCHASER—THE CONTRACT—PROPOSITION AND ACCEPTANCE.

Where an offer of sale of land stands for 20 years, and until after the death of the party to whom it is made, without compliance with its terms, the widow and sole devisee of such party cannot accept the proposition, and offer to perform it, and thereby make a contract binding upon the proposer.

In Equity. Bill by Mary Jane Marr, and Mary Jane Marr as executrix of the estate of Dennis Washington Marr, deceased, against Charlotte R. Shaw, to enforce the specific performance of an oral contract to convey land. Bill dismissed.

*Ferguson & Kneeland*, for complainants.

*Young & Lightner*, for defendant.

Before SANBORN, Circuit Judge, and NELSON, District Judge.

SANBORN, Circuit Judge. This is a suit in equity to enforce the specific performance of a contract to convey a tract of about 170 acres of land near the city of Minneapolis, brought by Mary Jane Marr, who

is the widow, sole devisee, and sole executrix of the last will of Dennis W. Marr, deceased. The bill alleges that on the 14th day of November, A. D. 1866, the defendant, who had just purchased the land for \$6,200, made a contract with Dennis W. Marr, in consideration that he would enter upon, cultivate, and occupy the land, and pay the taxes thereon, that she would convey the same to him at any time he should pay her the said \$6,200, and that in the mean time he should have all the produce and profits of the land and its cultivation; that Dennis W. Marr then agreed to purchase the land on these terms, paid her \$200 of the purchase money, and on the 20th day of March, 1867, entered upon, and thereafter occupied and cultivated, the land, and paid the taxes upon it, until he died, on September 12, 1886, and that in the mean time he had made permanent improvements thereon. The answer denies that the defendant ever made any contract to sell the land to Mr. Marr, but avers that she bought it in 1866, to provide a place for him to earn his living and support his family, and agreed that he might go into the possession and use of it as her tenant at will, on condition that he should pay the taxes on the land, and keep the improvements in good repair. It also alleges that under this agreement he did enter upon the land in March, 1867, and occupied it until he died. It denies that he ever paid anything towards the purchase of the property, or made any permanent improvements; and alleges that between the date of her purchase of the land and his death the defendant had advanced to him more than \$3,000, which he had never repaid.

In the consideration of this case it must be borne in mind that the entry upon, occupation, and use of this land by Mr. Marr, and the payment of the taxes thereon, were acts that both parties admit he agreed to and did perform. The complainant claims he performed them under his contract of purchase; the defendant, that he performed them under his contract of lease; hence the acts themselves, and their performance, do not strengthen the contention of either party. We must therefore look to other evidence to determine the only issue in this case, viz., whether the defendant made a contract of sale or a contract of lease with Marr in November, 1866, and to the contract thus established the occupation and use must be referred. This issue is strenuously contested, and the existence of any contract of sale rendered at least doubtful by the testimony of the witnesses. It therefore becomes important to notice the circumstances and situation of the contracting parties, and to consider the probability of the existence of this contract. As disclosed by the record, they were these: The defendant was the sister of Dennis W. Marr. She lived in New England, sometimes in Scarborough, Me., sometimes in Springfield, Mass. Mr. Marr, in and prior to 1857, lived in a house in St. Anthony, now Minneapolis, Minn., which he or his wife owned, but which was mortgaged for more than \$2,000 to one Mayall. In 1857, Mr. Marr failed in business, and was ever after that insolvent, until in 1868 he took the benefit of the bankrupt act. In 1859 he was unable to pay the mortgage on the house he occupied, and to prevent its foreclosure, and to save himself and family, which consisted

of his wife and four young girls, from being turned out of doors, he besought the defendant to buy, and she did buy, this mortgage on his house, at an expense of \$2,400, foreclosed it, and gave him the use and rent of the house and property from 1859 until he died in 1886, on the sole condition that he should pay the taxes, and keep the improvements in repair. In 1866, Mr. Marr, who was still living in this house of the defendant, and was very poor, besought a neighbor of his, who was going east, to go to the defendant in Maine, tell her of his extreme poverty, and beseech her to buy a piece of land and put him on it as her tenant, so that he could there earn a comfortable living for his family. This neighbor carried the message to the defendant, and in response she came from Maine to Minneapolis, in 1866, for the purpose of buying a farm, and putting her brother upon it as her tenant, so that he might there support his family, and educate his children. Immediately on her arrival she took pity on his poverty, and bought him a pair of horses, a wagon, and harness, for him to earn his living with during that winter. She then bought the land here in controversy, caused it to be conveyed to herself, paid \$4,000 cash for it, and gave a mortgage back for \$2,200, which she subsequently paid. In March, 1867, Mr. Marr and his family moved upon the farm in controversy, and he continued to occupy and cultivate it from that date until he died. For the horses, wagon, harness, and other purchases of personal property the defendant made for this brother, and in the expenses of her trip to Minnesota to assist him, she expended about \$1,000 in the fall of 1866. In the spring and summer of 1867 she advanced \$645 to enable him to plow and seed this farm, and buy machinery to operate it. In 1873, at his request, she intrusted him with \$1,500, to buy 10 acres of land adjoining her farm, and to invest the balance in pine lands for her. He took the money, but never bought the 10 acres, never invested any of it in pine lands, and never accounted for or paid back any of all these moneys so advanced and intrusted to him, which amount to more than \$3,000. About the year 1871, Mr. Marr grubbed and broke up about 30 acres of new land on this farm, and within two years after he received the \$1,500 from the defendant to invest for her he built upon it a granary, machinery building, hennery, ice house, shingled the house and barn, moved an old building across the road and attached it to the house, enlarged the cellar, and built a new kitchen, so that the buildings were made more spacious, useful, and comfortable, at an expense of about \$1,700; but no permanent improvements appear to have been made by him subsequent to 1875.

Under these circumstances, it is insisted by the complainant that in November, 1866, the defendant contracted orally to convey this farm to Marr for \$6,200, whenever he was able to pay this sum. The witnesses most favorable to complainant, however, go no further than to testify that in conversation with Marr at the time of the purchase of the farm the defendant told him she was buying the place for him to make a home for himself and his family, and that the farm should be his at any time he could pay back what she had paid for it, and Mr.