

ELFREDA SIMPSON, Appellant, v.  
MOSES PETERS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTERRADO COUNTY.

Argued October 15, 1968. Decided February 6, 1969.

1. An action for specific performance of a contract will lie only when it seeks to compel performance of an act other than the payment of money.
2. Equity cannot be invoked where there is an adequate remedy at law.

A contract for the sale of real property was entered into, but appellant failed to deliver the deeds, though the purchase price was paid. During the trial of the action for specific performance brought by the appellee, as petitioner, he indicated a willingness before suit to accept the price paid in lieu of the undelivered property. A decree was issued ordering delivery of the deeds, from which the appeal was taken. *The judgment was reversed and the decree vacated.*

The *Garber* law firm by *Philip J. L. Brumskine* for appellant. The *Henries'* law firm, by *Joseph F. Dennis* and *Moses K. Yangbe*, for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

On May 3, 1963, a bill in equity for specific performance of a contract was brought by the appellee herein against appellant, in the Sixth Judicial Circuit Court, Montserrado County, sitting in its Equity Division, during the June 1963 Term.

The bill of complaint substantially alleged that during the year 1956 the petitioner had agreed to purchase from respondent a half lot in Sinkor, and one whole lot adjoining the premises of one J. P. Pratt on the Stockton Creek,

in Bushrod Island, in the City of Monrovia. It was further contended that in consideration for the sale of these two parcels of land the petitioner agreed to pay, and respondents to receive, \$150.00 and \$200.00 for the properties at Sinkor and Bushrod Island, respectively. Appellee, however, held that irrespective of several requests and demands for appellant to sign and deliver unto the said appellee the subject pieces of property, the said appellant, to the injury of the appellee, neglected and refused to comply therewith. Additionally, the appellee averred that there was available to him no adequate remedy at law and in the circumstances he had to seek the assistance of a court of equity for specific performance of the contract theretofore entered into between himself and the appellant.

After the filing of the formal appearance, the appellant, then respondent, filed an answer in court on May 16, 1963. In count one of the answer appellant alleged that she had never herself agreed to sell to the appellee any property at Sinkor. She additionally alleged that the receipt made profert of by the appellee in respect to land at Sinkor was fraudulent, since she had, in fact, issued him no receipt in any such manner.

Count two of the answer averred that neither had the respondent agreed to sell to the petitioner any property situated at Bushrod Island. To the contrary, it was contended that the petitioner had importuned her to approach one Lahai Cooper and request of him that he sell to the petitioner a parcel of property situated at Sinkor. When shown the land, however, the petitioner claimed a dislike therefor and was thereupon offered in substitution therefor a second piece of land at Bushrod Island by Mr. Lahai Cooper. In his reply the petitioner reaffirmed his position taken in the complaint and, thereupon, pleadings rested.

This case was called by Judge Morris for hearing dur-

ing the June 1964 Term of the aforesaid Circuit Court. At that time the appellee, petitioner therein, was called upon to testify in his own behalf. Upon taking the stand he testified to the effect that in 1956 he had paid the appellant for the sale of two parcels of property at Sinkor and Bushrod Island, both in the City of Monrovia. As to the Sinkor land, he contended that it was virtually impossible to have a survey of the area effected by virtue of the fact that all surveyors approached by him refused to carry out the survey, for they contended it was contrary to government regulations in respect to surveying a half lot in Sinkor.

Turning to the Bushrod Island property, on cross-examination the following questions were propounded to the appellee:

"Q. So after she promised to give you the money for the half lot in Sinkor you agreed to accept it, not so?

"A. Yes. If she had given me I would have accepted it.

"Q. Did I also understand you have said that after defendant allegedly refused to convey title to the land at Bushrod Island you thereafter demanded the refund of the amount you paid and it is because of her failure to pay this amount that you decided to bring a suit?

"A. Yes."

The above testimony clearly shows that the initial understanding reached between the parties in respect to obtaining the purchase was nullified when the appellee consented to have cash in lieu of the land. The relevant portion of our law regarding specific performance reads:

"Actions for specific performance in which it is sought to compel the respondent, in pursuance of a contract into which he is alleged to have entered, to perform some act *other than the payment of money*

[emphasis ours]. Such actions are referred to briefly as actions for specific performance." Civil Procedure Law, 1956 Code 6:163(b).

Coupled with what has been stated above, there is a legal principle hoary with age to the effect that where a cause of action is ascertainable in terms of dollars and cents, the aid of equity may not be sought. This is true, for equity will not lie where there is an adequate remedy at law. In the case at bar, the petitioner in equity himself held that his bringing of the present writ was for the purpose of collecting a sum of money unjustly withheld. In the circumstances, the application for relief should have been addressed to a court of law and not equity.

In view of the above, the decree ordering deeds issued in favor of petitioner, now appellee, had no basis in law, and the same is, therefore, reversed, with costs against appellee. And it is hereby so ordered.

*Reversed*