

VARYING WRITTEN INSTRUMENT BY PAROL.

The plaintiffs were mortgagees of two town lots in Windsor, described as being "73 x 85 feet deep to a lane," in front of which were two water lots and dock property on the river side, which the evidence preponderated in establishing as having been verbally agreed and intended to be included in the security, although the documentary evidence tended the other way. The Court refused to reform the instrument on parol evidence, although satisfied that the plaintiffs ought to have succeeded had the case been one depending on the weight due to such evidence, and had the bill only asked for that relief would have dismissed it with costs; but as the bill contained a prayer for foreclosure that relief was afforded the plaintiffs, subject to the payment of such costs as the defendant—an assignee in insolvency—had incurred in resisting a rectification of the mortgage.

Dominion Loan and Savings Society v. Darling, 68.

See also "Specific Performance," 1.

VENDOR AND PURCHASER.

1. The delivery to a purchaser of a house of the key thereof is not of itself delivery of possession; it is but a symbolical delivery, and may be evidence of possession if given or received with that view.

The Peoples' Loan and Deposit Co. v. Bacon, 294.

2. Merely obtaining the keys of a building in order to view the premises, so as to estimate alterations intended to be made, and to perform other acts to preserve the premises from deterioration, is not such a taking possession under a contract for sale as will bind the purchaser and render him liable to pay interest on the purchase money. *Ib.*

3. What will be a sufficient taking of possession of a purchased house considered and treated of. *Ib.*

4. By one of the conditions of sale the purchaser was required to pay a deposit of ten per cent. at the time of sale and the remainder within one month thereafter, and upon such payment the purchaser was to be entitled to a conveyance and to be let into possession of the property purchased:

Held, that under this condition the payment of the purchase money by the purchaser and the delivery to him by the vendor of possession were concurrent acts, and unless the vendor was in a position to put the purchaser in possession he could not be called upon to pay interest on the unpaid purchase money. Neither was he bound in such a case to pay ground rent accruing due upon the property whilst he was so kept out of possession. *Ib.*