

upon payment of the amount so advanced, and interest, together with what was paid by the defendant for improvements and insurance, and it was expressly stipulated that time should be of the essence of the contract :

*Held*, that, although the court, as a general rule, will hold a party to perform such a contract within the time limited, yet it is not ousted of its jurisdiction, but will admit him to shew a good and valid reason for its non-performance within such time, and in that case may order specific performance.

*McSweeney v. Kay*, 432.

4. A party after making a contract for the sale of land, mortgaged it, and then filed a bill for specific performance. The mortgage not being due, the court on the hearing directed an inquiry whether the plaintiff could make a good title free from incumbrance; and reserved further directions and costs in case the master should find the plaintiff could not clear up the title.

*McDougal v. Miller*, 505.

5. One of the conditions of a lease was that the lessee (the defendant) should erect a barn of certain specified dimensions, and the land whereon it was to be erected was mentioned, but the lease was silent as to the exact location or site of the barn. The lessee commenced to erect a barn on a site with which the lessor was dissatisfied, who thereupon filed a bill, alleging that such a site was unsuitable, and that it had been selected by the defendant from improper motives; that another site had been agreed on between them, and that the building itself was faulty in its construction, and prayed an injunction restraining the defendant from allowing the barn to remain in its present position; and by amendment sought to enforce specific performance of the contract. The evidence failed to establish the material allegations of the original bill:

*Held*, (1) That by the terms of the lease the plaintiff had not the right of selecting the site of the barn; (2) that it was not a proper case for decreeing specific performance, or to award damages in lieu thereof, but that the plaintiff must be left to his remedy at law.

*Campbell v. Simmons*, 506.

6. The defendant, a man of weak intellect, was fraudulently induced to execute a quit-claim deed of certain land to which he was entitled as heir-at-law, but no consideration was given for such deed. The land was afterwards conveyed to the plaintiffs in these suits for valuable consideration. After the lapse of more than fifteen years the defendant brought ejectment against the plaintiffs, and it was decided that the legal title had not passed by the deed executed by him. The plaintiffs thereupon instituted proceedings in this court to reform