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VENN v. CATTELL.

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the subject. The point is a very simple one, but it appears to me to be one of considerable importance. It is upon a subject which is very familiar to us all, and is constantly occurring. The bill is a bill for specific performance. The question is, how long a person may wait, and what steps he may take, before enforcing the specific performance of a contract. The dates of course are very material, and it all depends upon them. It is rather material to mention what the facts were. There were a good many lots put up for sale, I think 17 or 18. The sale took place on the 28th Oct. 1870, and, by the conditions of sale, the abstract was to be delivered within twenty-one days, namely on the 18th Nov. When seventy-eight days had expired, that is, fifty-seven days after the appointed time for the delivery of the abstract, no step having been taken by either party, and nothing having been done at all, on the 15th Jan. 1871, the defendant gave notice to the plaintiff that he declined to complete his purchase, and required the deposit to be returned; and three days afterwards he brought an action against the plaintiff for the deposit, the deposit having been paid to the plaintiff. After one hundred and eighteen days had elapsed, that is upwards of three months after the appointed time, on the 24th Feb. 1871, the abstract of lots from 8 to 25, and of lot 54 was delivered, and on the very same day that they were received the defendant returned them all. He in no respect receded from what he had previously done—he returned every one of them. On the 9th March 1871, a fortnight later, the abstract was made complete by sending an abstract of lot 5, which was also bought, and on the same day the abstract was returned. The plaintiff was quick enough in filing a bill, because two days afterwards the bill was filed, namely on the 11th March 1871. Now the question is, whether the contract can be enforced in this court. It is said, and I think truly, that time was not of the essence of the contract, that is to say, time was not of the essence of the contract in the sense that it is sometimes understood, as in the sale of a public house where you are losing the trade; it was not a sale of a matter the value of which was fluctuating, such for instance as of foreign debentures, or of foreign stock; it was not a sale to a body which can fluctuate, such as a Dean and Chapter or the like, or a sale such as has come before the court in late cases where there was a question of immediate residence. The case is simply this, whether—to put it in the words of Lord Loughborough in *Lloyd v. Collett* (4 Brown's C. C. 459)—there is any case in which, where the pur-

chaser has refused to perform the contract after the time for doing so has elapsed, and the purchaser has never gone back from that, this court will enforce it. Several instances were given where that was done, or where it was said it was done, but most of the cases were cases of this description:—where the defendant accepted the abstract, and so in point of fact gave way to the lapse of time; and then having once given way to the lapse of time, the court has not held the delay binding on anybody, and so it goes on till at last somebody creates a new period from which time runs, as in the case of *Southcomb v. The Bishop of Exeter* (6 Hare, 213). But I want to know where a person says, "I have contracted that you shall deliver this to me on a certain day," and he does not do it for two months afterwards, and then the other man says, "I will not have anything to do with the contract," whether he can be bound to perform it? I am quite clear of this: that the modern train of authorities has all been to make the time much more strict, and very wisely so, and though it has not gone to the extent of saying it is to be the rigid strictness of a court of law, yet it is a strong thing to say that a man having contracted to buy property (and this property was apparently bought to sell again) he is to wait two or three months before the abstract is delivered, and then be bound to perform the contract. There are several cases where the defendant, by which I mean the purchaser, has applied to the vendor to deliver the abstract, and he has not done so, and the purchaser has thereupon said, "I will not accept it now," and he has not gone back from that view of the case, but has insisted upon it, and the court has refused to enforce the contract; but I am not sure that I have found any case which is exactly like this. The case of *Lloyd v. Collett* is as nearly as possible this case; and I cannot find that *Lloyd v. Collett* has been overruled or objected to in any authority or any text book on the subject. I think that the Lord Chancellor's judgment in that case is a very striking one. The judgment is not given where the case is reported, but is set out in a note to *Harrington v. Wheeler* in 4th Vesey, junior. The facts of the case are stated in 4th Brown; and in a note in 4th Vesey junior, at page 689, it is stated that the Lord Chancellor in *Lloyd v. Collett*, which was cited, pronounced the following judgment. The judgment was this, and I think it worth while to read it: "There is nothing of more importance than that the ordinary contracts between man and man, which are so necessary in their intercourse with each other, should be certain and fixed; and that it should