

## CHANCERY.

(Reported by THOMAS HODGINS, ESQ., LL.B., Barrister-at-Law).

## MARTIN V. REID.

*Specific Performance—Variation of Original Contract—Parol Evidence.*

A. made a contract with B. for the purchase of a lot of land, and both parties signed the contract. Some delay occurred in delivering an abstract, and A.'s Solicitor wrote to B.'s Solicitor, declining to complete the contract unless the abstract was delivered by a certain day. Subsequently, negotiations were entered into by the parties for a variation of the terms of payment, and two propositions, in writing, but unsigned, were made by A. for B.'s acceptance. B. accepted one of them, and so informed A. or his Solicitor, but after a little time, on the advice of his (A.'s) Solicitor, declined to carry out the contract as varied, relying upon the former letters. Upon a bill filed by B.

*Held, 1st* That the defendant could not rely upon the letters fixing a time for the delivery of the abstract, as by his subsequent dealing with the plaintiff he had waived his right to withdraw from the contract.

*2nd* That parol evidence could be admitted to connect the unsigned memorandum with the signed contract.

*3rd* That there was sufficient evidence to show that the proposition of the defendant had been accepted by the plaintiff.

In this case a contract dated the 12th March, 1857, had been made and signed between plaintiff, as vendor, and defendant, as purchaser, of a lot of land in the Township of North Gwillimbury for the sum of £1,250, payable by instalments. Defendant went into possession and made improvements. Various letters passed between the parties in reference to the terms of payment, the defendant asking for further time. The Solicitors of the defendant also commenced a correspondence with Mr. Miller, Solicitor for plaintiff in the transaction, requesting an abstract of title; and on the 18th March, 1859, wrote to plaintiff's Solicitor, stating that unless an abstract was delivered within three weeks from that date, the defendant would consider the contract at an end. A Registrar's certificate of title was furnished, and plaintiff and defendant continued to correspond about the contract and extension of the time for payment. On the 22nd of July, 1859, the defendant came to Toronto, and called upon the plaintiff's Solicitor, and requested him to put in writing the proposals he had to make as to extending the time; he then with plaintiff's Solicitor went to the office of his own Solicitor, who proposed an alteration in the terms and wrote out a proposal for leasing the premises, and also the following:—"The within agreement is this day confirmed between the parties in all respects, except as to the terms of payment of £750, the balance therein mentioned, which it is hereby agreed between the parties shall become due and payable in equal annual instalments of £100 each with interest—the first payment thereof to become due on the 1st January, A. D. 1861, which the within named John Martin hereby agrees to accept. In all other respects the within agreement stand."

This proposal was submitted to the plaintiff who accepted it, and during the following month the plaintiff's Solicitor verbally informed the defendant's Solicitor of the acceptance; and on the 29th September, 1859, plaintiff wrote to the defendant that he had accepted his proposal as to the extension of time. A few other letters passed between the parties, chiefly from plaintiff, requesting defendant to come to town and complete the negotiation, but nothing was done until January, 1860, when defendant came to town and stated that he would leave the matter in the hands of his Solicitors; and then, on the 20th January, 1860, wrote to the plaintiff's Solicitor, withdrawing from the contract on the grounds set out in their letter of the 18th March, 1859. The following month the plaintiff filed his bill. After evidence had been taken, the cause was brought on for a hearing.

*Hodgins*, for plaintiff, cited *Fry on Specific Performance*, *Clark v. Moore*, 1 J. & L., *Dalton v. McBride*, 7 Gr. 293; *Ridgeway v. Horton*, 3 De. G. M. & G., and 6 H. of Lds. 238.

*Freeland*, for defendant, relied on letters of March and April, 1859, withdrawing from the contract.

THE CHANCELLOR (Vankoughnet).—In this case the terms of the original agreement are sufficiently specific, and they are only varied as to the terms of payment of the balance of £750 by the proposal of July, 1859, as stated in the memorandum prepared by the defendant's solicitors and handed to plaintiff's solicitor, and subsequently accepted by the plaintiff, and marked as Exhibit B in the cause. I consider that all that had taken place prior to July, 1859, was waived by the negotiations at that time, and that

defendant then agreed to carry out his original contract with the variation referred to.

This paper B. was in presence of the defendant handed by his solicitor to the plaintiff's solicitor with another paper containing an alternative proposition. I think paper B. is with the evidence sufficiently identified as the paper referred to, and mentioned in the letter from the plaintiff to the defendant, of the 29th September, 1859, and therefore is taken out of the operation of the Statute of Frauds. It is quite true that it was contemplated that this memorandum should be formally endorsed on the original agreement and signed, and if it were necessary that this should be done to enforce the plaintiff's rights the court would compel it to be done. This being so, the court can without that formality proceed here to execute it. The only question on my mind is as to an ambiguity on the face of the paper B. in regard to the time from which interest should run. No objection on this score was made at the hearing, probably because it was well understood between the parties that interest was to be payable according to the original contract; and this I think is the fair construction of the paper, which fixing itself no time from which interest is to run, leaves it to be governed by the original agreement, which, except as to the extension of time for payment of the £750, is in all other respects confirmed. The plaintiff is to blame in not having exhibited and made out to the defendant a proper title, as by the original agreement he was bound to do, and his attention was called to it more than once by the defendant's solicitors and abstracts demanded. It is quite true that the defendant's agreement was at an end for default in plaintiff's solicitor not delivering a proper abstract in time; but this was before July, 1859, and after that time the plaintiff was as much bound as before to make out a good title. The memorandum delivered to the defendant's solicitors cannot be considered such an abstract or explanation of the title as must content defendant, who was not bound to hunt up the plaintiff's title deeds or search out the chain of title at the registry office from such imperfect information as the memorandum afforded.

Decree—Specific performance of original agreement as named by Exhibit B. Reference as to title. Reserve further directions and costs.

## CHANCERY CHAMBERS.

(Reported by A. GRANT, ESQ., Barrister-at-Law, Reporter to the Court.)

## MAUGHAN V. WILKES.

*Attachment against a married woman.*

A married woman, defendant, living with her husband, was ordered to bring certain accounts, as administratrix, into the master's office, and having disobeyed the order, an application to commit her for contempt was refused, the general rule being that the husband must answer for the wife's default, unless he shows some ground of exemption.

In this case an order to administer the estate of the late Walter Ewing Buchan had been obtained and carried into the master's office. In proceeding to take the account, the master had issued his warrants requiring the defendants, one of whom was a married woman, to bring certain accounts relating to the estate into his office, which having been disobeyed by her a motion was made by *Freeland*, for an order to commit for contempt.

*SPRAGGE, V. C.*—This is an application for an order for the commitment of the defendant Anne Wilkes, a married woman, for contempt, for not bringing into the master's office certain accounts directed by the master to be carried into his office, she having, as his certificate states, been duly required so to do. Anne Wilkes is made defendant as administratrix of the estate of Walter Ewing Buchan, deceased; her husband is made a co-defendant.

Upon the application being made, I stated that it was my impression that the application could not be granted, and on a subsequent day I was referred to two cases in support of the application. One of them, *Bunyan v. Mortimer*, (6 Mad. 278.) only decides that an attachment cannot issue against a married woman for not answering, without a previous order that she should answer separately from her husband. In the other case, *Otway v. Wing*, and *Wing v. Otway*, (12 Sim. 90.) an order was made against a married woman for the payment of money; but upon