The party who has once determined his election to affirm a fraudulent contract cannot afterwards avoid it upon the discovery of additional incidents of fraud; the effects of such discovery being only to corroborate the fraud which has been waived, and not to revive the right of avoidance: *Campbell* v. *Fleming* (1834), 3 L.J.K.B. 136, 1 A. & E. 40; *Law* v. *Law* (1904), 74 L.J. Ch. 169, [1905] 1 Ch. 140. But the disaffirmance of a contract in fact may be supported by any grounds of fraud subsequently discovered: *Wright's Case* (1871), 41 L.J. Ch. 1, L.R. 7 Ch. 55.

Delay in determining his election may operate presumptively in affirmance. Lapse of time without rescinding will furnish evidence that he has determined to affirm the contract; and where the lapse of time is great, it probably would in practice be treated as conclusive evidence to shew that he has so determined: *Clough* v. *L. & N.W. Ry.* (1871), 41 L.J. Ex. 17, L.R. 7 Ex. 26; *Martin* v. *Pycroft* (1852), 22 L.J. Ch. 94, 2 DeG. M. & G. 785: *Morrison* v. *Universal Insce.* (1873), 42 L.J.Ex. 415, L.R. 8 Ex. 197; *Sharpley* v. *Louth Ry.* (1876), 46 L.J. Ch. 259, 2 Ch.D. 663.

But in every case, if an argument against relief which otherwise would be just is founded upon mere delay, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are: the length of the delay and the nature of the acts done during the interval which might affect either party, and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy: *Lindsay Petroleum Co.* v. *Hurd* (1874), L.R. 5 P.C. 221; *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218.

Non-performance for a considerable lapse of time, or under such circumstances as manifest the intention of abandoning it, may be treated as a rescission of the contract: *Davis* v. *Romford* (1860), 30 L.J. Ex. 139, 6 H. & N. 245.

Where an agreement had been made between a mortgagor and the mortgagee for the former to give up possession and release all his interest to the mortgagee, which was not acted upon, and twelve years afterwards the mortgagee sold under his power as mortgagee, it was held that the agreement had been abandoned and that the mortgagor retained equity of redemption and was entitled to the surplus of the purchase-money: *Rushbrook* v. *Lawrence* (1869), 39 L.J. Ch. 93, L.R. 5 Ch. 3. Where land had been sold in lots, subject to covenants with the vendor not to carry on the trade of a beer shop, and the vendor afterwards suffered beershops to be opened and himself supplied them with beer, he was held to have waived and rescinded the covenants over all the lots: *Kelsey* v. *Dodd* (1882), 52 L.J. Ch. 34.

If the party, upon discovering the fraud, affirms the contract by some unequivocal act, he cannot afterwards revoke his election; and as he cannot approbate and reprobate, he cannot elect to affirm the contract in part, and avoid it in other part, unless the two parts are so severable as to form independent contracts: *Clough* v. *L. & N.W. Ry.* (1871), 41 L.J. Ex. 17, L.R. Ex. 26; *United Shoe Manufacturing Co.* v. *Brunet*, 78 L.J.P.C. 101, [1909] A.C. 330, 18 Que. K.B. 511.