

found within the two years, to be worthless or non-existent, to the satisfaction of the defendant himself, who then waived any release from *John Dewitt*, and the pretended equity in *Patterson*, having in fact no existence, or having long before disappeared, that the plaintiff did within the two years show a good and perfect paper title, consisting of the patent from the Crown, and the conveyance to him from the patentee in 1817. The legal title was perfect, and there was no equity outstanding, and Mr. *Freeman* approved of and was satisfied with it, as found by the jury in the action at law, and as appears from his endorsement on the bond. If it was not intended that I should take as evidence in this case the facts as reported in the case at law (which report was used by both parties on the argument) then I would give leave to examine Mr. *Freeman*, who, I think, could not have come to any other conclusion than the one stated. It was such a title as this court would have compelled the purchaser to take, within the language of his contract. And whatever technical strictness may have stood in the plaintiff's way at law in suing upon the bond, no such embarrassment exists here, in decreeing specific execution of the only remaining term of a contract, which the plaintiff has substantially, if not literally, performed. The decree must be for payment of the £100 and interest, according to the terms of the bond, with the usual legal rate interest from the time the last instalment was payable.

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MILLER V. START.

*Mortgages—Evidence—Costs.*

In a suit by a prior against a mesne encumbrancer on the argument of the cause, by consent, an affidavit was read which stated an agreement on the part of the prior encumbrancer to be postponed to the latter; when the court gave liberty to the plaintiff to cross-examine the deponent upon the statements contained in his affidavit, which permission not being acted upon by plaintiff, his bill was dismissed with costs.

Mr. *Gray*, for the plaintiff.

Mr. *Proudfoot* and Mr. *Wilkinson* for the defendants, other than *Start*, against whom the bill was taken *pro confesso*.