

time a further payment of \$50. The plaintiff built and occupied a house on the north half and had and continued to have the use and occupation of the south half. She made default in the payment due June 1st, 1898, but in May or June, 1899, through her solicitor, she offered to pay the balance due if defendant would convey the south half, which he refused to do. In October, 1902, without any notice to the plaintiff, the defendant sold and conveyed the south half to a Mrs. Washington.

This action was commenced in Sept., 1901, for specific performance of the agreement or for damages in lieu thereof, and the trial judge gave the plaintiff a verdict for \$300 damages.

*Held*, 1. The variation of the original agreement by the subsequent transfer of the north half of the lot could not operate as a rescission of the agreement as to the south half.

2. The stipulation that time was to her of the essence of the contract was, under the circumstances, only in the nature of a penalty which a Court of Equity should relieve against, and everything went to shew that it was not the real intention of the parties to carry it out strictly: *In re Dagenham Dock Co.*, L.R. 8 Ch. 1022; *Lowther v. Heaver*, 41 Ch. D. 248, and *Hipwell v. Knight*, 1 Y. & C. 401, followed.

3. The plaintiff, though she delayed over six years before taking proceedings, yet, being all the time in possession, was not guilty of such laches as to bar the rights: *Fry on Specific Performance*, s. 1110.

Appeal dismissed with costs.

*C. P. Wilson and J. F. Fisher*, for plaintiff. *Aikins, K.C.*, and *A. C. Ferguson*, for defendant.

Full Court.]

BLACK v. WIEBE.

[July 14.

*Stay of proceedings—Vexatious proceeding—Abuse of the process of the Court.*

This was an action under "The Mechanics' and Wage Earners' Lien Act," to realize the claims of the plaintiff company and other lien holders out of a property owned by the defendant Hirbert. It had proceeded so far that the land was about to be sold unless she paid the sum of \$750, found due to the lien holders, of which the plaintiff company's share was \$589.