

Eng. Rep.]

VENN V. CATTELL.

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be certainly known when a man is bound, and when not. There is a difficulty to comprehend how the essentials of a contract should be different in equity and at law. It is one thing to say: the time is not so essential that in no case in which the day has by any means been suffered to elapse, the court would relieve against it, and decree performance. The conduct of the parties, inevitable accident, &c. might induce the court to relieve. But it is a different thing to say: the appointment of a day is to have no effect at all, and that it is not in the power of the parties to contract that if the agreement is not executed at a particular time, the parties shall be at liberty to rescind it. In most of the cases there have been steps taken. Is there any case, in which, without any previous communication at all between the parties, the time has been suffered to elapse? I want a case to prove that, where nothing has been done by the parties this court will hold in a contract of buying and selling, a rule, that certainly is not the rule of law, that the time is not an essential part of the contract. Here no step has been taken from the day of the sale for six months after the expiration of the time at which the contract was to be completed." In the case before me it is three months, not six months. "If a given default will not do, what length of time will do? It is true the plaintiff must have considered himself bound after the day. So he was. He could not take advantage of his own neglect. He says, by my own default, this contract is void in law; I cannot succeed at law; on the contrary, the other party is entitled to recover back the money he has paid in expectation of the execution of his contract; therefore an equity arises to me. An equity out of his own neglect. It is a singular head of equity. The consequences of this idea, which I know has prevailed, have been extremely inconvenient. The hardship generally falls upon the other party. The utmost extent of relief, where the party is discharged at law, would be on making him full compensation. Is interest of the purchase money compensation? The time may go on for years. Suppose the subject was an estate sold for payment of debts; debts and legacies carry interest at 5 per cent.; the purchase money may carry 4 per cent. from the time the contract ought to have been completed. Where it is with a view to a re-sale, as in this case," (that is the case here) "what is the consequence? Here a man has purchased these ground-rents upon a speculation which is totally defeated. I see no reason to enjoin the action. You deliver yourself from that by paying the money. The action is against the auctioneer. I do not think the equity extends to him, for he

personally contracts that he receiving the deposit money, will return it if the terms are not complied with." That is the judgment of Lord Loughborough in that case, and I think every word of it applies to this case, and I intend to follow it. I think it very desirable there should be a distinct rule laid down as to what time a person may continue not to perform his part of a contract. I do not mean at all to say that if the abstract had been delivered within two or three days, that that is not a case which equity would enforce specific performance of. Here the abstract ought to have been delivered on the 18th Nov., and it was not delivered on the 15th Jan. when the defendant says, I will have nothing more to do with the case, and then on the 24th Feb., the first abstract is delivered; and on the 9th March the delivery of the abstract is completed, and the defendant never varies a word from what he first said, namely, that he would have nothing at all to do with it, as he wanted to sell it again. I do not mean to say to what extent the rule is to go. I think the abstract must be delivered within a reasonable time, and if a man knows he cannot perform the contract within a reasonable time, he ought not to enter into it. I am of opinion this Bill ought to be dismissed, and I must make the costs follow the event. I shall be glad if the parties will appeal it, because then the Lords Justices will say whether the rule I propose to lay down is the correct one, or what rule is to be adopted in cases of this description. The rule I propose to lay down is this, that when a man enters into a contract, and says the abstract shall be delivered on a particular day, and it is not delivered within a reasonable time after that day, that thereupon the person who has bought the property is at liberty to say, I will have nothing more to do with the transaction. If he afterwards goes back from that and accepts an abstract, of course a totally different equity arises; but in that case I will not enforce specific performance, unless I am instructed by a higher tribunal that it is my duty to do so.

IRISH REPORTS.

QUEEN'S BENCH.

THE QUEEN V. THE DIVISIONAL JJ. OF DUBLIN.

Nuisance—18 & 19 Vict., c. 121—*Certiorari*.

An order was made by Justices at Petty Sessions under the 18 & 19 Vict. c. 121, s. 12, that the owner should immediately disinfect a house, so that the same should be habitable and free from infection at the expiration of one month under penalties. By another order, made