

QUESTIONS RELATING TO TIME IN CASES OF SPECIFIC PERFORMANCE.

FIRST PAPER.

English Cases of the Eighteenth Century.

The object of this paper is to ascertain how far the passage of time can be used by a defendant, in a suit for a specific performance of a contract, to defeat the relief demanded by the plaintiff? Logically, the subject falls under three heads. First: Those which discuss the amount of time which, in the contract sought to be enforced, the plaintiff had to fulfill his promises. Second: Those which answer the question: Suppose the plaintiff is in fault in not completing his promises in the time limited in the contract, what is the consequence of this default? Third: Those in which the delay of the plaintiff is not a delay in fulfilling his promises, but in bringing his bill. When we examine the actual decisions, however, we find the ideas developed in one class of cases affect the decisions in the others. At least as far as the first two classes just mentioned are concerned the subject develops as a whole, though there is no logical connection between the two facts. While, therefore, bearing in mind this logical division of the subject, I shall endeavor to follow the actual course of successive decisions, first taking up the English Cases of the Eighteenth Century. Perhaps the first reported case involving the specific performance of a contract, in which the effect of the passage of time on the rights of the parties is discussed, is *Hayes v. Caryll*.¹ There, in September, 1697, A. agreed to sell to B. certain land. By the terms of the contract the title was to be made out within one month. After two years and a half and the death of the vendor, the vendee brought his bill against the heir for a specific performance. The defendant's counsel first asserted that the delay was due to the plaintiff who had made fanciful objections to the title. He then pointed out,

¹ 1 Bro. P. C. 126, Tom. Ed., 1702.

that since the contract was made circumstances had changed; his father had agreed to sell because he was in need of ready money, but the money had now been procured elsewhere, and, therefore, the present defendant had no need or desire to part with the estate. The court dismissed the bill, but whether for these or other reasons advanced by the defendant's counsel is not stated. The argument suggests two questions. First: How far the peculiar circumstances of one of the parties, rendering it important to him to have a prompt execution, should be taken into consideration by a court in case there has been a delay? Second: If in a contract of sale the delay is caused by objections to title, do these objections have to be valid if the party making them wishes to avoid the consequences of the delay? The other reported cases of the century do not decide either of these questions; the second is not again discussed.²

The next case, that of *Smith v. Dolman*,³ is important as it illustrates the confused state of English land titles during the period, a fact which has had important influence on the development of the subject under discussion. In 1695 a contract was made for the sale of real property, a good conveyance to be made on November 28. In November the vendee went into possession, but the vendor made no conveyance. Finding some encumbrances on the estate the vendee discharged them. He then discovered other encumbrances; these, though requested to do so, the vendor did not take any steps to remove. In 1699 the vendee asked the Court of Chancery to either release him from his contract or require the vendor to give him a good title. The court directed that the defendant make a good title by Michaelmas 1700 or the plaintiff to stand relieved of the contract. The question of the title was referred to a master, who does not seem to have made any report until 1704, when he indicated

² The case itself seems to have had no influence. I have mentioned it at length for these reasons: It is the first case; it raises two apparently important questions, and subsequent cases will show that it is a good illustration of what often happens in the law's development; an apparently important question raised in an early case not again discussed until our own day.

³ 6 Bro. P. C. 291, Tom. Ed., 1708.

that the encumbrances still existing, amounted to much more than the purchase money. These the vendor seems to have set about to remove, but the title was not clear until 1708. In October of that year, thirteen years after the original contract, the vendee was obliged to accept title and pay the balance of the purchase money. The vendee appealed, setting up the delay. The vendor's counsel took the position that the vendee should not complain of the delay because during all the time he had been in undisturbed possession. This argument seems to have been effective. At any rate the decree was affirmed. It may be that the case stands merely for the statement, that the vendee, after holding possession of the estate, and urging the vendor to clear the title, cannot, after the vendor has cleared the title, turn round and refuse to take it. Such a proposition is almost self-evident. But the whole course of the case, and the difficulty land-owners then had in making clear titles to their estates disclosed, suggests the question, whether the vendee was not obliged to allow the vendor time to complete his title beyond that stipulated in the contract? In other words whether the vendee, in *Smith v. Dolman*, finding on November 28 that a good title could not be then made, could have terminated the contract?

The leading case of the first half of the eighteenth century is *Vernon v. Stephens*.⁴ There A. agreed to purchase an estate from B., the purchase money to be paid at stated times. A. having made default in respect to all payments after the first, the parties made a new agreement in which A. agreed to pay the balance due before a certain day or A. to lose the estate and all the money he had paid. A. made another default, due in part to the scarcity of money in 1720, and in part to the death of B. and the failure of his executors to act. Subsequently A. offering the balance due with interest and costs, secured a specific performance of the agreement. The Lord Chancellor said: "Here have been solemn agreements, that ought not lightly to be got over; but, however, if the defendant has his money, interest and costs, he will have no reason to complain of having suffered; on the contrary it would be a great hardship

⁴ 2 P. Wm. 66, 1722.

on the plaintiff to lose all the money he has paid; lapse of time in payment may be recompensed with interest and costs; and as to their agreements they were intended only as security for payment of money, which end is answered by the payment of principal, interest and costs."⁵ It will be noted that the action of the court in as far as it involved relief against the forfeiture of money already paid was nothing new. A court of equity had already relieved against a forfeiture in the case of mortgages.⁶ But in this case they not only prevent the vendee losing the money already paid, but enforce the contract after the time stipulated for its termination. In explaining his action Lord Macclesfield shows the influence of three distinct ideas. There is the thought that it is a hard bargain and that equity, relieving against it, does substantial justice. This thought justifies relief against the forfeiture, but hardly the taking of the land from the vendor. The other two ideas, however, justify the full action of the court. There is the thought regarding compensation, treating as it does the default of the vendee in payment on the day stipulated as a breach of a minor term of the contract, while the concluding words reflect the idea that equity will look at the real contract between the parties, and that doing so in this case they find it a contract in which the land is simply collateral security for the payment of the balance of the purchase money.

The last two cases illustrate what was evidently the attitude of the court at this time, namely, that in contracts for the sale of land, stipulations in regard to time were not important. Indeed the Reporter, Atkyns, represents Lord Hardwick, in the case of *Gibson v. Patterson*,⁷ as granting specific performance to a vendor of land without regard to his negligence "in not tending a conveyance within the time limited by the articles," on the ground that "most cases which were brought in this court relating to the execution of articles for

⁵ P. 67.

⁶ 1 Y. B. 9 Ed. 4, 25, 1 C. P. Coop., Append. 535, 536. Ed. 1838. So also Chancery had cancelled bonds given by young men for a greater amount than the money they received. *Walter v. Dolt*, 28 Car. 11, Eq. Cas. 90 Pl. 2.

⁷ 1 Atk. 12, 1737.

the sale of land were open to this objection." And, though it has been questioned whether Lord Hardwick ever used the words attributed to him, the difficulty of making a good title, the custom of inserting a definite day for the conveyance in articles of sale, and the absence of cases raising the delay of the vendor as a defence, justifies us in supposing, that the fact that a vendor did not complete his title within the time limited in the articles was such a common occurrence that practically neither party ever took any notice of it.⁸

In the last half of the Eighteenth Century we have, in *Greson v. Riddle*,⁹ a case in which the court seems to have

⁸ Lord Loughborough was of the opinion that there was nothing in the case of *Gibson v. Patterson* which warranted the assertion attributed to Lord Hardwick by the Reporter, the inference being that he never made such an assertion. See *Lloyd v. Collett*, 1793, as reported in a note to *Harrington v. Wheeler*, 4 Ves. 690. This opinion of Lord Loughborough's may be questioned. Lord Colchester's MS. notes contain a copy of the case. See *Lloyd v. Collett* as reported 4 Bro. C. C. 348, note, Perkins' Ed. From this copy it would appear that the Registry details the fact that there was a contract for the sale of an estate, dated November 30, the formal articles to be drawn on or before the following February. In March, probably March, 1736, or 7 [It is printed 1754; an evident misprint, as Atkyns gives the case as having been decided by Lord Hardwick January 31, 1737], the vendor offered to convey. The vendor asserts that the vendee said he had no money, that he was off with the bargain and that he would flee to Scotland if they pressed him. The offer of the vendor was made after the time stipulated for in the articles. The fact that the plaintiff asserted that the vendee refused to take because he had no money, would not be incompatible with the vendee himself taking the position that the vendor had not produced his title deeds or tendered a conveyance at the proper time.

⁹ 1783. Before the Lords Commissioners. Given by Sir Samuel Romilly in his argument in *Seton v. Slade*, 7 Ves. 268. Besides the cases on options to renew leases spoken of later in note 37, there are two unimportant and badly reported cases which we have omitted to mention. One *Potts v. Webb*, mentioned by counsel in *Pincke v. Curteis*, 4 Bro. C. C. 238 Perk. Ed., probably decided about 1784, in which Lord Thurlow is represented as refusing specific performance to a vendor of land because he had not made out his title within the time limited by the articles, and *Williams v. Bohman*, also referred to in the argument of *Pincke v. Curteis*, and probably decided about the same time, in which the same Lord Chancellor is represented as enforcing an agreement though considerable time had elapsed since the time limited by the articles.

gone farther in disregarding the element of time than in any other case. There the contract expressly provided that in case the title should not be complete in two months the agreement was to be void. There was an outstanding legal estate which prevented the title being perfected within the time limited. Apparently after the time limit had expired a bill was successfully brought by the vendor to obtain specific performance. Mr. Mansfield for the defendant argued that it was the intention of the parties that the agreement should be void if not performed within the time, and that if this agreement would not hold it would be necessary to insert a clause that the agreement would be void notwithstanding the decision of a court of chancery. To which Lord Thurlow replied: "Such a clause might be inserted, and the parties would be just as forward as they were then." Here is a decision which apparently takes the extreme position, that if A. wishes to sell land to B. he cannot agree on a time when the sale shall be off if not completed. Lord Thurlow was probably developing the idea of forfeiture. But it may be pointed out that there is a difference in forfeiting a sum of money or property because of the non-performance of an act, and losing the prospective benefits of an incomplete purchase. The conception that to lose the purchase money because the title had not been made out by a particular day amounted to a forfeiture, was assisted by the conception that the estate was the estate of the vendee and therefore the money the money of the vendor, from the moment of the contract. This explanation is made by Lord Eldon.¹⁰ The fiction that in equity, a thing which is to be done is done, has assisted in the confusion of more subjects than the consequence of not performing agreements of sale on the day stipulated.¹¹

The position attributed to Lord Thurlow in the case just mentioned seems, as stated, to mark the extreme limit of the indulgence of a court of equity to the plaintiff who has not fulfilled the stipulations of the contract for the sale of an estate in regard to time. A few years later, in the case of

¹⁰ *Seton v. Slade*, 7 Ves. 265, 1802, 274.

¹¹ Compare the case at law decided about this time by Lord Kenyon, *Berry v. Young*, 2 Esp. 640, 1788. Cited in *Farrer v. Nightingale*.

Pincke v. Curteis,¹² we note a reaction. The sale was by auction on November 15, 1791, the conveyance to be completed on the fifth of April following. In January and again in February the purchaser asked for the abstract of title, and shortly after April fifth he demanded the return of the deposit which he had paid. On April 21 he received the abstract; examined it, and finding a flaw refused to proceed, and again demanded his deposit, beginning an action at law for its recovery. The bill was filed in November, 1792, for an injunction to restrain the action at law, and for a reference of the title to a master to ascertain if a good title could be made. The court acted favorably on the bill.¹³ Lord Commissioner Ashurst takes the position that: "If there is no damage done to either party, an agreement may be enforced after the time named."¹⁴ Lord Commissioner Wilson, however, cites Lord Loughborough in an earlier unreported case, *Ambrose v. Hodgson*, for the position that in sales by auction, when the time of completing is specified, and a deposit is paid, "if the title is not made out at the time the vendee is entitled to take back his deposit."¹⁵ He concurred in disregarding the defence in the case before him, because the vendee had waived the delay by examining the abstract of title sent to him after the day fixed for the completion of the transaction.¹⁶ In *Lloyd v. Collett* we have a case fully reported,¹⁷ in which Lord Loughborough takes the position attributed to

¹² 4 Bro. C. C. 329, 1793, Perkins' Ed. 238.

¹³ The case probably went in the end against the vendor because he had misrepresented his title, see 4 Bro. C. C. 333, note 5, Perkins' Ed. 240.

¹⁴ 4 Bro. C. C. 332, Perkins' Ed. 240.

¹⁵ The case before Lord Loughborough was probably decided about 1783, when Lord Loughborough was one of the Lords Commissioners.

¹⁶ The Master of the Rolls, Sir Richard Pepper Arden, concurred in the order of the Commissioners on the ground stated by Wilson: see page 333. Another case decided about this time in which continued discussion of the title after the day set for completion was held without comment to prevent the vendee complaining of the delay, is *Fordyce v. Ford*, 4 Bro. C. C. 494, 1794.

¹⁷ 4 Bro. C. C. 469, 1793. Better reported in respect to the opinion in a note to 4 Ves. 690.

him by Wilson.¹⁸ The parties entered into a contract for the sale of a ground rent, on the tenth of August, 1792, the sale to be completed before the twenty-fifth of the following March. There was a deposit by the vendee of 100 pounds. The vendee frequently applied for the abstract of title before March 25, and shortly after that date demanded his deposit. In the following September the abstract was furnished, but the vendee immediately returned it and insisted on his deposit. The bill for a specific performance, which was brought by the vendor, November 16, 1783, was dismissed. As reported in *Brown* the reason for the Chancellor's action was, that he considered the "conduct of the vendor as evidence of an abandonment of his contract." As reported in *Veasey*, he is made to take the position that the appointment of a day for completion being part of the contract, there is no liberty to rescind it, thus restating his reported position in *Ambrose v. Hodgson*, that if A. agrees to complete a sale to B. on a particular day and does not do so, the contract is at an end. Yet practically at the same time Lord Loughborough himself throws a doubt on the universality of this proposition, by the way in which, in *Newman v. Rogers*,¹⁹ he is willing to seize on other circumstances besides the express words in the contract as a reason for terminating a sale which is not completed on time. In that case the subject of the sale was a reversionary interest in land. There had been delay on the part of the vendee. Lord Loughborough says: "No man sells a reversion who is not distressed for money, and it is ridiculous to talk of making him a compensation, by giving him interest on the purchase money during the delay."²⁰ This sentence makes the double

¹⁸ In *Milward v. Earl Thanet*, cited in 5 Ves. 720, Lord Alvanley is reported to have said that Lord Kenyon was "the first to have set himself against the idea that had prevailed that when an agreement was entered into either party could come at any time." There is apparently no evidence that, even in agreements for the sale of land, this statement was ever strictly true; and there is also no evidence in the reports that Lord Kenyon took any special stand in the matter, though as we see in the text there is abundant evidence that such a stand was taken by Lord Loughborough.

¹⁹ 4 Bro. C. C. 391, 1793.

²⁰ P. 393.

suggestion, that under some circumstances delay in the payment of the purchase money can be compensated for, and that the character of the thing sold should be taken into consideration in order to interpret the importance of time.²¹

The case of *Jones v. Price*,²² in the Exchequer, introduces us to still another idea. A. in September agreed to purchase an estate from B. A deposit was paid. Title was to be completed on the twenty-fifth of March following. Neither party did anything to hurry the other until March 23, when B. said he would like to go on. A. demanded the abstract and a good title in two days. This of course was demanding an impossibility. A. sued for his deposit, while B. brought a bill for an injunction and specific performance. He secured the injunction restraining A.'s suit at law, and seems to have been allowed an opportunity to make out a good title. The court took the position, that the question, whether time is of the essence of the contract, "depends entirely upon the manner in which the parties themselves, by their conduct, showed that they meant to treat it." The court then considers the non-action of either party, not as evidence of the mutual abandonment of the contract, but as showing that time was immaterial.²³ There is a good deal of obscurity in the words "essence of the contract." Nevertheless, the tendency of the decision is clear. In order for the defendant to show that the non-performance of the contract on the day stipulated is fatal to the plaintiff's claim, he must do more than point to the terms of the contract, he must prove by other evidence that time was an important element, and slight evidence will be taken to indicate that the parties

²¹ This second idea is somewhat similar to that expressed by counsel in *Hayes v. Caryll*, 1 Bro. P. C. 126, Tom. Ed. 1702, *supra*, note 1, and in the decision in *Popham v. Eyre*, Loff. 786, 1770, *infra*, note 24, namely, that the delay of the plaintiff is important if the reason which caused the purchaser to sell no longer exists. But there is this important difference between the two ideas: Lord Loughborough's would take the usual situation of parties selling a particular class of commodities as interpreting the probable meaning of the parties in the contract before the court, while the earlier cases would take for the same purpose the actual situation of one of the parties to the contract before the court.

²² 3 Anstr. 924, 1797.

²³ P. 925.

do not consider, and therefore the court need not consider, time as of any importance. Theoretically both the Court of Exchequer and Lord Loughborough tried to get at the meaning of the parties, practically the respective points of view of interpretation are directly opposed to each other.

In *Vernon v. Stephens*,²⁴ the court had intimated that the non-payment of money on a particular day could be compensated for by the payment of interest. In the last year of the century a similar idea was suggested in respect to a delay which prevented the vendee of real property from taking possession on the time stipulated. "Time," says Justice Chambers, "is frequently very material; but it would be monstrous to say, the act of a mere trespasser . . . alone should defeat the contract. A compensation might easily be made when the estate should be recovered for any disadvantage for not having possession precisely at the day."²⁵

Until the end of the century, with the exception of one unimportant case,²⁶ there was no discussion of the effect of the plaintiff's laches in bringing his bill. In 1799, however, there are two reported cases which involve this question. The first is *Spurrier v. Handcock*.²⁷

This case was a contract for the sale of a reversion made in February, 1793. The abstract of title proved unsatisfactory to the vendee, indeed it was imperfect, but the vendor urged an early decision on the part of the vendee whether he would take or not. The vendee refused to come to any immediate decision, and there seems no doubt that the only reason the vendor did not bring a bill to be relieved of the bargain was due to the fact, that not being able to make out a good title, he would have to pay the costs of that proceeding. In April, 1797, on hearing that the vendor

²⁴ 2 P. Wm. 66, 1722.

²⁵ Dicta in *Omerod v. Hardman*, 5 Ves. 722, 1801, p. 732.

²⁶ *Popham v. Eyre*, Loff. 786, 1774, the vendee who brought a bill for specific performance of a contract for the purchase of land, delayed pushing the same for seven years. In the meantime the need for money which had originally caused the vendor to agree to sell was passed. The court dismissed the bill.

²⁷ 4 Ves. 667, 1799.

was about to resell the reversion, the vendee brought his bill for a specific performance. Even after the bill was answered, there was delay on the part of the plaintiff, but, about the time the replication was filed, that is in the summer of 1798, the last life on which the reversionary interest depended dropped, and the estate became much more valuable. At once the plaintiff became active and was willing to accept any title which the defendant could give. Yet the court, in view of his conduct refused a specific performance. So also in *Harrington v. Wheeler*,²⁸ Lord Loughborough refused to make a vendor of real estate fulfill a contract made in 1790, the bill, without adequate excuse for the delay, not having been brought for nearly six years.

In the first part of this paper I stated that from a logical point of view the subject of time could be considered as presenting three classes of problems. First: Those which discuss the amount of time which the plaintiff had to fulfill his promises; those which deal with the result of an admitted default on the part of the plaintiff in respect to the time, and third, those in which the plaintiff's delay is not in fulfilling his promises, but in bringing his bill. In the few cases of the eighteenth century which discuss the third class, there would appear to be the underlying assumption that the plaintiff must be diligent in asserting his rights. If this is the only principle on which the cases of the nineteenth century are going to proceed, then this part of the subject at any rate is simple. It is true, what is due diligence on the part of a plaintiff depends upon the facts of the particular case, and may be a question of some difficulty. There may be even some apparent conflict in the cases. But the subject can rightly be classed with the simple subjects of the law, which are those in which the courts consciously or unconsciously respond to a single impulse, idea or principle. With the first two classes of questions in which the element of time is discussed, the early cases indicate the possibility of difficulty. In the first place, there is no evidence of any separation of the question "What was the intention of the parties in respect to the time of fulfillment?" from the question "What

²⁸ 4 Ves. 686, 1799.

should be the consequence of the plaintiff's default?" Thus in *Vernon v. Stephens*,²⁹ Macclesfield treats the interest offered by the defendant as compensation for the delay, and in the same sentence intimates that he is enforcing the real contract between the parties. But the principal difficulty of the subject is shown by the fact that the decisions appear to be governed by what one may call two conflicting instincts or tendencies. There is present, as we have seen in the decisions of Lord Loughborough, the natural feeling that an expressed or implied stipulation in a contract in respect to time should be lived up to; that in this respect, as in any other, an agreement once made should not be set aside. On the other hand there is the feeling that it is an injustice for one party to hold the other to a literal fulfillment on an exact day. The origin of the first feeling or tendency is identical with the origin of the obligation of any contract. The other feeling or tendency has, I believe, its origin in the dominant class of contracts coming before the Court of Chancery in the eighteenth century. These were contracts in respect to land. During the century land was rarely dealt with for speculative purposes. It was a comparatively stable commodity. Both of these facts tended to prevent a delay in the fulfillment of a sale being a very serious matter to the parties. At the same time the confusion existing in land titles rendered it most unreasonable that a vendee should expect his vendor to make a good title to land on a particular day, for it was patent to all that the ability of any one to make a good title to land within a limited time was problematical. As stated the cases disclose the conflict between these two tendencies. If one party to a contract did not perform his part of a contract on the day expressly stipulated, and the other promptly disavowed the contract, we have, even in the case where the subject matter of the contract was land, at least one case in which the court held that the party defaulting in respect to time, could not, by afterwards offering to perform, succeed in a bill for specific performance.³⁰ Here we have an instance where the first tendency mentioned predominated. It also predominated

²⁹ 2 P. Wm. 66, 1722.

³⁰ *Lloyd v. Collett*, 4 Bro. C. C. 469, 1793, *supra*, note 17.

where the nature of the subject of the contract made a prompt fulfillment important to the parties.³¹ The other tendency, that it is an injustice for one party to hold the other to a literal fulfillment in respect to time, showed itself in those decisions in relation to the sales of land, which held that if the defendant, at the expiration of the time in which the plaintiff was to perform, did not promptly repudiate the contract, he was held to have waived the stipulation in regard to time.³² Even though a time was fixed for completion, if the party who intended to insist on it did not give positive evidence before the time had expired of his intention to do so, this non-action was treated as proof that the day of completion was an element which the parties had agreed to treat as non-existent.³³ Again the same tendency is shown in the idea that default in the payment of money, or giving possession can be easily compensated;³⁴ and in the question "Whether time is of the essence of the contract?" a question pregnant, from its very indefiniteness, with possibilities of escape from those terms of a contract which relate to time.³⁵ It also shows itself, not in the idea that equity will prevent a forfeiture, but in the thought that a stipulation terminating a contract of sale if the same is not fulfilled on a particular day partakes of the nature of a forfeiture against which equity should relieve.³⁶

This résumé shows us, that we cannot say, the feeling that one should live up to his promises in regard to the time for the completion of his obligations, was stronger than the feeling that it was unfair in a defendant to insist that he had no obligation because the plaintiff had not fulfilled on time. Neither do we see even the beginning of the development of any general principle which will determine when time shall be regarded as important and when not important. Our examination, therefore, must for the present serve only to show the tendencies which were in conflict. In

³¹ See note 1, *supra*.

³² *Pincke v. Curteis*, 4 Bro. C. C. 329, 1793, *supra*, note 12.

³³ *Jones v. Price*, 3 Anstr. 824, 1797, *supra*, note 22.

³⁴ *Vernon v. Stephens*, 2 P. Wms. 66, 1722; *Omerod v. Hardman*, 5 Ves. 722.

³⁵ *Jones v. Price*, 3 Anstr. 924, 1797.

³⁶ *Greson v. Riddle*, 7 Ves. 268, 1783, *supra*, note 9.

the next Paper I hope to trace the development of the subject in England during the period dominated by Lord Eldon.³⁷

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³⁷ NOTE.—*On the effect of a delay of the lessee with an option to renew to demand a renewal of a lease, on his right to such renewal.*

I have omitted from this paper any discussion of the cases involving the specific performance of covenants to renew leases, though numerous examples of such cases in which the lessee failed to notify the lessor of his desire to renew within the time stipulated in the original lease exist in the reports of the eighteenth century. In the first place I have fully treated these cases in 49 A. L. R. (O. S.) 389, July, 1901. In the second place, I do not think they can be regarded as cases illustrating the specific performance of contracts, any more than cases on trusts can be so regarded. The typical case is where A. leases to B. for three lives, and A. stipulates that if B. will nominate a new life on the dropping of any of the lives, and pay a fine, he, A., will grant B. a new lease. B. fails to nominate a new life or pay the fine in the time limited, but he asks the court to overlook this negligence and force the landlord to grant him a new lease. In Ireland the original lease was regarded as a grant of land for an indefinite period of time, the land to be forfeited on the non-fulfillment of certain conditions. The Irish courts of equity, therefore, granted the renewal irrespective of the laches of the plaintiff. These decisions have no effect on the question of time and the specific performance of contracts. For the facts of the Irish cases see 49 A. L. R. (O. S.) 390-392 and notes. See also remarks of Lord Redesdale in *Lennon v. Napper*, 2 Sch. & Lef. 682, 1812, 685.

The English cases regard such leases with less favor, requiring the tenant who would insist on a renewal to notify the landlord at about the time indicated in the original lease. The facts of the cases are given in 49 A. L. R. (O. S.) 389, note 8. Specific performance was denied in the following cases: *Ripon v. Rowley*, 1723, cited 1 Ridgw. 194 (The request for renewal was to be made within one year from the dropping of a life; it was not made for ten years); *Allen v. Hilton*, Fonb. Eq. Book 1, Ch. 6, sec. 12, note c, 1738 (Lease of a colliery, with option to renew for another term if the lessee let the lessor know of his desire for a renewal within three months of the expiration of the first lease. The lessee did not signify his desire for a renewal until one month before the expiration of the old lease); *Bayly v. The Corporation of Leominster*, 1 Ves. 476, 1792 (There was a covenant to renew after one of three lives had dropped. The lessee requested a renewal after two lives had dropped); *Baynham v. Guy's Hospital*, 3 Ves. 295, 1796 (Similar to previous case except that all three lives seem to have dropped); *Eaton v. Lyon*, 3 Ves. 690, 1798 (similar to *Bayly v. The Corporation of Leominster*). See, however, *Rawlstone v. Bentley*, 4 Bro. C. C. 415, 1793. Yet, as pointed out in the article referred to, even in England enforcement of these covenants to renew leases was treated from the point of view of enforcing a property right of the lessee rather than that of the specific performance of contracts.