

possession of none. He was in treaty for this land, but did not purchase it until some months afterwards. If the land had been Stoddert's, and he had put the married couple in possession of it, then the act of putting personal property upon it might have been considered in part performance. If he had declined the purchase, and had bought other land, and put them in possession, and Bowie had then put the property on it, it might have been so considered, because the act could not well have been referrible to any other intention. But the married couple are enforcing this agreement against both parents. Stoddert does not resist, but it must be shown to bind Bowie, that he, Stoddert, was bound as well, and to show this, part performance must be proved against him. And what was this part performance? Merely permitting the occupant to remain there for little more than a year before the death of Bowie, Bowie taking and selling as his own the property put upon the land, and Stoddert taking the deed to himself instead of his daughter. It seems to me very clear that there was no part performance by either of the contracting parties. The case of *Dugan and others vs. Gittings and others*, 3 *Gill & Johns.*, 157, is not a parallel case to this. There the gift was made to the daughter about to be married. The consummation of the marriage was considered the fulfilment of the condition which it was to attach, and was considered as equivalent to the payment of the purchase money in a pecuniary contract. The pecuniary contract was fully performed by the one party, and partly performed by the other.

Entertaining this opinion, I must dismiss the bill.

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[An appeal was taken from the decree dismissing the bill, and this decree was affirmed by the Court of Appeals, at its December term, 1853.]

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R. JOHNSON and J. M. CAMPBELL, for Complainants.  
THOS. G. PRATT and THOS. S. ALEXANDER, for Defendants.