36 Cye. 601.

9 Cye. 419,

Bivermere Vs. Middlesborough Town Lands Co. 50 S. W. 6..

Rudisell Vs. Whitener, 15 L. R. A., N. S. 81;

Unless it can be shewn that at the time of making the promise the premiser had no intention to perform the same and that therefore the promise was dishonest andmeant to deceive.

Rudisell Vs. Whitneer, 15 L. R. A., N. S. 81.

And evn then the promise must relate to something substantial and material as an ingredient of the contract and not to something incidental, subordinate and collateral.

Pomeroy Contracts, Sec. 217.

Now here there was something said about getting a tenant for the property and, according to the wdight of the testimony, Mr. Staley said that hewould guarantee a tenant. But I am unable to find from the testimony and surrounding circumstances that Mr. Staley made that Statement dishonestly and for the purpose of deceiving the defendant. In fact she herself went into possession of the property spon after the contract was signed on MAy 12th, and remained in possession until about the middle of September. There was therefore an occupant in the house all summer, the owner herself. How then can she complain? it is true that there was some testimony to the effect that Mr. Staley told Mrs. Coblentz that it would rent better if she moved in and hung pictures and decorations on the wall. Mr. Staley denied this and testified that the house was already furnished.

He also testified that he called mrs. Coblentz over the phone on or about August 15th, and asked her when she would be ready to settle, and she replied 'bout September 1st'; thatshe also stated that they were going to take the hpuse and carry out the terms of the agreement and that they liked the house very much. It seems clear that the failure to get a tenant was not deemed a matter of any great concern at that time, though the summer was nearly at an end.

On all the facts I don not consider the failure to secure a renant a good ground of defence to this action. The guarantee was not of an existing material fact but a mere verbal promise, the fulfilment of which was wholly incidental or collatera, to the substantial written contract of sale, and not an ingredient thereof.

Second--as to the conditions, limitations and restrictions in the deed to Mr. Staley. It is shown that this lot was originally the property of the Braddock Building and Development Company, in all of whose deeds certain restrictions, conditions and limitations appear. The contract between the parties of date May 12, 1913, refers to these in the following words--"Subject to the same rerrictions described in the aforegoing deed." The aforegoing deed being a deed for the lot in question from the Braddock Building abd Development Company to Young & Staley, "dated July 9, 1910, and recorded in liber H. W. B. No. 294, folio 56, one of the land records of Frederick County."

Defendant testifies that she read the contract before signing it but not the deed referred to therein, and that she did not know what these restrictions were. It would never do to permit such a defence to stand in the way of specific performance. The contract puts her upon notice and easy inquiry, and before signing the same she could have, and should have, informed herself as to the true character of these restrictions. It needs no citation of authority for such a familiar doctrine, but I may refer to

Pomeroy Contracts, Sec. 443, Note 2.

I am constrained to hold upon the whole case that the plaintiff is entitled to the relief he seeks. Neither the defense of a verbal guarantee by the Plaintiff of a tenant, nor the failure to examine the deed referred to in the contract furnish ground for repudiating the written contract, which is for an adequate consideration, fair, certain, mutual, free of ambiguity, capable of being performed, and without fraud in its inception. I shall therefore decree accordingly,

It is thereupon, this 9th day of April, 1914, by the Circuit Court for Frederick County, sitting as a Court of Equity and by the authority thereof, adjudged, ordered and decreed that the