

[The bill in this case alleged that in the spring of 1845, the defendants agreed to purchase of the complainant, certain lands in Howard district, on which there were erected a cotton factory and other improvements, for the sum of \$20,000, of which \$5000, were to be paid in cash on the delivery of possession, fixed for 1st June, 1845, \$1666 66 $\frac{2}{3}$, in twelve months thereafter, with interest on the unpaid balance, and the residue in equal instalments of 5, 10, and 15 years, with interest on the balances unpaid; privilege being given to pay the whole before if desired. No written agreement was alleged to have been made by the parties, but a memorandum was filed with the bill, said to have been drawn up by the complainant, and acknowledged by the defendants to be a true statement of the terms agreed upon. The bill stated, that possession had been delivered on the 1st June, 1845, under the agreement; charged the defendants with a refusal to comply with the terms of sale; and prayed for a specific performance.

The joint answer of the defendants, denied their acceptance of the terms contained in the complainant's exhibit, and a paper was filed therewith differing in some respects from that of the complainant, but agreeing as to the price and times of payment, which the defendants said had been prepared by them, and which the complainant had requested them to keep, as a correct statement of the offer made by him. The answer stated that the defendants were at first willing to accept this offer, but difficulties presenting themselves, as to the complainant's title, and wishing to avoid loss of time, they agreed to take possession of the premises at once, and pay to the complainant a rent of \$900, until he should be able to give them a clear undisputed title thereto; but they expressly denied that this arrangement was made in pursuance of the original agreement. This position was sustained by the testimony of H. N. Gambrill, and Neilson Poe, the former of whom said, "after the title was ascertained, or thought to be defective, and before they (the defendants) entered into possession, Mr. Owings, (the plaintiff) agreed that they should take possession of the property, and pay a rent at the rate of \$900 a year, I believe,