

until the right was rendered perfect, which, it was then believed, would be six weeks from the time they took possession, according to Mr. Owings' promise." And in another place: "all parties were apprised of the alleged defect in the title, and possession was given under the provisional arrangement for a tenancy." The latter, who had conducted the negotiations for the defendants, said: "the object of this arrangement was, to secure to them, (the defendants,) the right to withdraw from the property, without being hampered by it as purchasers, in case the title could not be perfected in a reasonable time." He also said, that in consequence of complainant's failure to dispel the cloud which enveloped the title, the defendants, prior to February, 1846, requested him to notify the complainant of their intention to quit, which he did. No evidence was adduced by the complainant to prove the acceptance by the defendants of the terms of his alleged proposal, or to show, that their entry into possession was done in pursuance of this arrangement, if proved, or in part performance thereof:]

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THE CHANCELLOR :

This, therefore, is a bill, to enforce the specific performance of a parol agreement in relation to lands; and the complainant rests his right to a decree upon the ground of a part performance of the agreement; and there can be no doubt that if he has succeeded in proving an agreement; and in showing it to have been in part performed, that he is entitled to have it specifically executed. *Moale vs. Buchanan et al.* 11 G. & J., 314.

This right is founded not upon the notion, that part performance is a compliance with the statute of frauds; but upon the ground, that such part performance, takes the case entirely out of the statute. The part performance relied upon in this case, is the delivery of possession, and it is indispensable that such delivery to, and taking possession by the defendant, is referrible to the contract alleged in the bill, and not to a distinct, or different title, *ib.* 323.