

Case No. 9,255.

MASON v. WALLACE.

{3 McLean, 148.}¹

Circuit Court, D. Indiana.

May Term, 1843.

VENDOR AND PURCHASER—IMPROVEMENTS—SANCTION—SPECIFIC PERFORMANCE—DELAY IN PAYMENT—WHEN TIME ESSENTIAL.

1. Where possession has been taken of property purchased, and valuable improvements made, the acquiescence of the vendor may be presumed.

[Cited in *Story v. Black*, 5 Mont. 26, 1 Pac. 1.]

2. A delay of payment for two years, under such circumstances, where the vendor sustains no damage which interest will not compensate, will not bar a bill for a specific execution of the contract.

[Cited in *Ewins v. Gordon*, 49 N. H. 461.]

3. Where time is made an essential part of the contract, the rule is different.

In equity.

Mr. Stevens, for plaintiff.

O. H. Smith, for defendant.

OPINION OF THE COURT. This is a bill for the specific execution of a contract. On the 1st of January, 1835, Mason purchased from the defendant, Wallace, lots 112 and 113, in Jeffersonville, in this state, for six hundred dollars, payable in three annual payments, of two hundred dollars each. Wallace executed a title bond for a deed when the purchase money should be paid. Shortly after the purchase, Mason took possession, and has remained in possession. He has made large and valuable improvements upon the lots, and in the streets, &c., amounting to a sum exceeding 4,000 dollars. On the 1st of September, 1838, Mason tendered to Wallace 732 dollars, the amount due, including interest, on the contract of purchase, which Wallace refused, and declined making a deed. This refusal was founded on the negligence of Mason, in not paying the purchase money; and a specific execution of the contract is resisted on the same ground. Time may be made a material part of the contract, and, when that is done, chancery will not decree a specific execution in favor of a party who has failed to perform his part of the agreement. But in most cases time is not essential, and a mere delay of payment, unless it has been unreasonable, will be no bar to a specific execution of the contract. Where the default is connected with a material change in the circumstances of the parties, or in the value of the property, chancery will not decree a performance.

In the present case, the purchaser has not only been in possession of the premises since the purchase, but he has expended, in improving the property, more than seven times the amount of the purchase money. The defendant alleges that this was done by complainant in his own wrong, and without authority. But, from the possession of the complainant, and the progress of his improvements, the defendant must have had full

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notice, and, as it does not appear that he took any step to arrest the progress of the complainant, the acquiescence of the defendant may be fairly presumed. The delay was less than two years of the first payment, and less than one of the second. The doctrine which governs this case is found in *Longworth v. Taylor* [Case No. 8,490]; s. c. 14 Pet. [39 U. S.] 174; and in *Piatt v. Oliver* [Case No. 11,115].

We think, taking all the facts and circumstances into consideration, the plaintiff is entitled to the relief prayed for in his bill, on his paying the purchase money, and interest up to this decree. There was an informality in the tender, and this, connected with the general features of the case, induces the court to require the payment of the interest, as stated. Decree, &c.

{See Case No. 9,256.}

¹ {Reported by Hon. John McLean, Circuit Justice.}