

No. 8781

Supreme Court of Illinois

Meredith Hawkins

vs.

Thomas Hunt, et al,

In the Supreme Court

Harrison
Hunt & others } Enroute Supreme

1st The Court below ^{below report} in sustaining
Remover to Birk & his wife is
Birk absolutely & without leave to remove

H. S. Forbes for
plaintiff in error

2 The Court below erred in
dismissing Birk for want of
equity in the case, it being a
general Remover

3 The Court below erred
in sustaining a general
Remover to Comp. W. Birk
& his wife's cause

Remover in Error
B. and H. H. H. H. H.
for rights

H. S. Forbes for plaintiff
in error

At a Circuit Court begun & held
at the Court House in Mt. Vernon, County of Jefferson & State
of Illinois - At the September Term A.D. 1852, before the Hon
S. S. Marshall Presiding Judge of the 12th Judicial Circuit
of the State of Illinois

Be it remembered that hereofore (to wit) on the 28th day
of August A.D. 1852, ^{Abraham Heapsays Jefferson} ~~James~~ ^{Richard S. Nelson}, his Solicitor
and filed in the Clerk's Office of the Jefferson Circuit Court,
on the Chancery side thereof - his Bill, which of course
- is - which is in words & figures, as follows, to wit:

State of Illinois }
Jefferson County } Jefferson Circuit - Sep-
tember Term, A.D. 1852.

into the Honorable
Samuel S. Marshall Presiding Judge of
the Jefferson Circuit in Chancery Court
your orator Meredith Hawkins
kind respectfully sheweth to your
Honor that some time in the month of
April, A.D. 1852 one Crawford Connor
who owned an improvement upon a tract of
land situated in Jefferson County - contain-
ing eighty-acres, it being Congress land, and
one Thomas Hunt - who with your orator &
the said Connor ^{are} all residents of the County of
Jefferson, did by the consent & agreement
of the said Connor by a Land Warrant
upon the eighty-acre tract of land, upon

which the said Comor had said improvements
as proposed upon the terms following, that is to
say, that said Hunt- was to lay his said
vourrant- upon the said Comor's improvements
& the said Comor was to swap or exchange
them for a certain forty-acre tract of land
situated in Jefferson County ^{app.} described
as follows, that is to say, S. E. q^r of 20 q^r
Section 27. T- 2. R. 3 East containing forty-
acres, And the said Hunt- was also to have
an improvement on Congrip land adjoining
the said forty-acre tract of land also
belonging to said Comor in addition to
said forty-acres of deeded land which was
owned by said Comor in fee simple and
a certain Bond or writing, obligating
was thereupon made & entered into-between
the said Comor & the said Hunt- by which
said Instrument- they were mutually bound
to each other, as your orator has been in-
formed & believes to convey to each other
in fee the forty-acre tract of land and
improvements for the said eighty-acre
tract of land, according to the premises
herein before laid down & specified & the said
Instrument- was thereupon handed to one
Gairney J. Preston, to hold for them, and
according to the terms of the said Instrument
the said conveyance to be made to the said Hunt-
by the said Comor & by ~~the~~ ^{the} said Comor to the
said Hunt- as soon as said Hunt- could
make a deed to the eighty-acre tract of
land upon which he either had laid or

was to lay his said warrants in accordance
with existing acts of Congress and which —
could not then be done immediately under
the law as it then stood — and the said
Hunt did also thereupon take possession of
the forty acres of land & the said improve-
ments, and said Common took possession of
the said eighty acre tract of land, & have
since then ^{fully} respectively occupied & improved
the said tracts of land according to this
said agreement of purchase. Your orator fur-
ther shews ~~to~~ ⁱⁿ honor that at the time the
said Hunt & Common made said ex-
change or swap, and executed the said writ-
ting as aforesaid, the said Hunt was con-
siderably involved in debt & amongst others
owed your orator \$24.26, or thereabouts and
one Joel F. Watson about \$16, or so besides
a debt of \$10, to one Wilkerson — and
other debts besides to a large amount. And
such being the situation & condition of the
said Hunt as regards his aforesaid real Estate
and indebtedness to your orator & others,
he, the said Hunt was in the act of removing
in a sly way from the County of Jefferson afo-
said & was actually at a considerable distance
on the ~~highway~~ road from his dwelling, when
your orator & one Joel F. Watson took out
process against the said Hunt for their
respective demands & your orator & one
Asa B. Watson, a Constable of said Coun-
ty pursued him, that the said Asa
B. Watson & your orator on overtaking
did not arrest him nor serve the process upon him but the
said Hunt did then & there propose

after some altercation between your Orator
& him, & that the said John D Watson
respecting the time security & manner
of his the said Hunt leaving home in
debt - as aforesaid, and your Orator and
the said John getting afraid and seeing
out the process aforesaid, at last propos-
ed to your Orator to buy his said said
forty-acre tract of land and the said
improvements on Congreg lands purchased
by him of said Common as aforesaid, and
did offer & propose to take therefor the
sum of \$125- to be paid in manner fol-
lowing, that is to say, the said Hunt offered
to sell & convey your Orator the said forty-
acre tract of land & improvements - on
Congreg lands in consideration of your
Orator paying off & discharging the debt
due by him to Joel T Watson as aforesaid
amounting to \$16. or so & also the
debt due by him to your Orator \$24.26
together with costs of costs of both suits
amounting to \$43.91 & paying off a debt
due by him the said Hunt to the said
Watson \$10. in the aggregate & also
giving him the said Hunt his ~~own~~
your Orator's promissory note for the
balance of the said sum of \$125- after
deducting the aforesaid claims, payable
at Christmas following, which would be
about \$71. some odd cents, And which
said last-mentioned note might also
be discharged by your Orator by taking

up lifting or paying off claims or other
debts due by him the said Hunt to the
amount of the said balance of \$ 81 some
add cents as aforesaid & your orator
did may it please your Honor there &
there ^{and} to his the said Hunt-propagand ^{sition}
and did there & there settle & satisfy
the said claims of the said Lord F.
Watson & the satisfaction of the said
Hunt & the said Asa B Watson Con-
stable did return the said the said
process so sued out by your orator
& the said Lord F. Watson in full of
debt and cost, & your orator did re-
ceive & deliver to him the said Hunt
his note for the said sum of \$ 81 some
add cents & did also agree to settle
& pay off the said debt due by the said
Hunt to the said Wilkinsons so soon
as he got back to Mount Vernon, which
he has since then and immediately on his
arriving home paid or settled to the
^{satis}
~~the~~ satisfaction of the said Wilkinsons, by
his agent Albion Taylor as can be
made appear, & that the said Hunt
did there & there in the presence of Asa
B Watson & divers other persons who
were called upon to witness the trans-
action or bargain aforesaid, verbally
in consideration of the premises sell &
convey to your orator the said forty
acre tract of land & the said improve-
ments on Conger lands & did there &
there express himself perfectly satisfied &

and declared that he gave your orator
full possession of the aforesaid forty acre
tract of land and appurtenances and all
the rents & crops & in fact every thing due or to
become due by way of rent upon the place
at that time worth about \$20., and fur-
ther told your orator to take possession
thereof as well as of the said improvement
forthwith as he the said Hunt could
not & would ^{not} then go back. I did also
call upon the said Watson Constable
as aforesaid to witness that he the said
Hunt gave him possession of the said
premises & he the said Hunt further
stated ~~and~~ that as soon as he came
back to Jefferson County, which would
be at the ^{next} Circuit Court in Jefferson
County - aforesaid, he the said Hunt would
make him, your orator a regular deed
of conveyance in fee to the aforesaid tract
of land so sold by him to your orator
by verbal bargain as aforesaid, & further
~~that~~ directed your orator to call upon
one Albert Conger who was living on
the said forty-acre tract of land, for
the duplicate or certificate of entry
of said land which was in his the
said Hunt's trunk in the possession
of Conger & also to call upon F. J.
Benton Esq. who held the said Bond
or writing between the said Hunt &
the said Conger, and get it, & your
orator did accordingly obtain the said

duplicate, but - Mr. Prescott excused him-
self from producing & giving up the said
Deed to your orator at that time on the
score of not being able to find it - but some
weeks afterwards told your orator that he
had left it - with one Tanner for safe-
keeping, your orator further sheweth
unto your honor that he did accordingly
on arriving home amongst other
things take possession of the said forty-
acre tract of land and improvements
on Congess land and did notify ^{me} Al-
bert Congess and one Sarah Ball who
were in possession of the premises last-
afore said either as tenants of the said
Hunt - or occupied the same under him
in some way - of the said purchase by him
of the said forty-acre tract of land &
improvements as aforesaid, & until the
said Hunt returned, without let-
molestation or hindrance of any kind
or ever did occupy peacefully & exercise
in as full and unfeigned a manner as he could ~~exercise~~
~~and~~ ^{over the same} ~~over the same~~ ^{with}
~~actually~~ ^{actually} residing on the premises
of all of which matters and things herein
before alleged, the said Crawford
Comor here in before me mentioned
was fully apprised or at least - so
far notified as to fully apprise him
of your orator's purchase of said forty-
acre tract of land & improvements, & his
having taken possession thereof by virtue
of said bargain & sale so verbally made
by & between him & the said Hunt - as

can be ~~made~~ made appear before the
said Hunt - came back to Jefferson
County - as herein after mentioned &
fraudulently attempted, as herein after
mentioned to defeat & wrong your
orator in his said purchase, and to
oust him & eject him from the possession
of the said forty-acre tract of land &
improvements, & to evade making him
a deed according to his said agree-
ment, so verbally by him made as aforesaid.

That the said note so
executed by your orator for the balance
was payable on or before the 25th day
of December next - & your orator is
ready & willing whenever the same is
due, or soon thereafter to pay the same on
debts or claims on the said Hunt - ~~due~~
due by him, or in manner that this ~~Honorable~~
Honorable Court should declare to be
just & equitable to the full amount -
Thereof, and he has in truth & fact -
on his part - not only performed the
aforesaid contract in all things on his
part - to be done & performed, but -
has in truth & in fact - paid & sat-
isfied the whole of the consideration
money according to the true intent and
meaning & effect - of the said verbal bar-
gain so made between him & the said ~~Hunt~~
and ^{actually} ~~did~~ take possession of the premises
~~in pursuance of the said contract~~
~~Contract~~ in said verbal purchase as
before mentioned, pursuant to said

contract, & is still in possession ^{thereof} ~~of the same~~,
& your orator ^{charges} ~~charges~~ that the performance
by him of the consideration by said verbal
bargain & sale in manner aforesaid,
and the doing & performing by him of
all things on his part to be done &
performed substantially and so far
as he was able or could do, the whole
of the consideration ^{thereof} being in a point of law
as well as ^{in fact} paid off discharged & satis-
fied according to the spirit & effect
of ^{the} said agreement - did in equity &
good conscience entitle him to a deed
of conveyance in fee simple from the
said Hunt - on his return as you said
to Jefferson County - in the spring
following ~~spring~~ ~~following~~ the date
thereof, and does now ~~entitle~~ ~~entitle~~ enti-
tle him to a deed of conveyance for
the said forty-acre tract of land
with the appurtenances, from the said
Hunt - as he respectfully submits

But - so it is my duty -
please your Honor, that the said Hunt
wholly unmindful of the premises, sup-
posing ~~supposing~~ ~~supposing~~ that he could by art
& subterfuge evade & violate with
impunity - his aforesaid contract of
bargain & sale so made by him as
aforesaid, in manner following has
attempted to cheat, defraud & outmanage
your orator in the premises, that is to
say, the said Comon and the said
Hunt - did fraudulently take the said

Bond or writing out of the hands of the
said Tanner & destroy the same before
your orator could find out where it
was, & further more he the said Common
by some stratagem or other got into ^{possession}
of the dwelling house in which said Com-
mon resided or dwelt on the said
forty-acre tract of land against your
orator's consent, by means whereof they
the said Hunt & Common believed your
orator's rights in the premises would
be thereby annihilated & destroyed, and
the truth is the said Common igno-
rant & entreated as he is in the
acts of fraud Cheating and low cunning
has been so far misled by the said
Hunt, that he is actually in spite
of your orator and the notice and
warning by him given to the said
Common not to do so, living in the
said dwelling house in which the
said Common did ^{live} and your orator
thus frequently demanded a deed
of the said Hunt since the re-
turn of the said Hunt in the spring
as aforesaid, yet he, the said Hunt
wholly refuses to make him a deed
according to his said contract all
of which } is contrary to equity & good
faith as } your orator charges &
contends, & your orator further
charges that the said Hunt &
Common & the said Albert Common

for the said Hunt - and at his re-
quest, or receipted for to him as
aforesaid & has besides got your
orators note for the balance, which
he threatens to trade & transfer
before it becomes due to some
bonafide apene without notice
he the said Hunt being at the same
time notoriously insolvent and for as
much as he is without security - save
in this Honorable Court - where frauds
of this nature are peculiarly cognizable
and releuable & when suits of -
specific performance of contracts are
alone entertained - he therefore prays
the aid thereof, and so there reads
that the said Crawford Common
Thomas Hunt - and Albert Common
may be made dfts to this Bill &
may answer the same without
being sworn your orator duly & properly
having this oath & that upon
proof of the material allegation
of this Bill, your Honor may be
pleased to order and decree the
said Hunt - specifically to perform his
said contract of bargain & sale
& that the said Common may be like-
wise by decree thereof be ordered & compelled ^{to join}
with the said Hunt - in making a
conveyance of the said forty acres
tract of land to your orator

your orator's former tenant in point
of law have fraudulently with divers
other persons unknown to your
orator collected together for
the purpose of defrauding your
orator in the premises, and
endeavouring to make it appear
by the fraudulent destruction
of said writing as aforesaid
that the said contract of bargain
and sale was at an end &
that your orator was out of
possession of the forty ^{acre} tract of
land, & the said Common in
possession as your orator believes
and carrying out fully their reful-
gious designs ^{of} the said Common has
since the said purchase by your
orator claimed the said improve-
ment on Congress land & the said
Agent has as your orator believes
truthfully sworn that the said im-
provement ~~to~~ bargained for & purchased
by your orator belongs to the said
Common, and so may it please
your Honor, by means of the pre-
misses your orator is not only
in danger of being cheated & defraud-
ed out of ^{his} said land so purchased
and paid for by him as aforesaid
but unless relieved in the premises
in this Honorable Court thus ^{actually} ~~lost~~ lost the

or make a deed of conveyance
to the said Hunt according to the
requests of said writing oblig-
ation ^{or deed of conveyance} to your orator or
in case they refuse to comply -
with the decision of this Honorable
Court some suitable person as Commissioner ordered
to convey the same by proper
deed of conveyance to your orator
^{their p^rson & stand as} in ^{that} your orator be ^{guilted} justified in
the possession of the said forty acre
tract of land & improvements there-
with sold to your orator as ^{deed} ^{as before said} ^{until}
a hearing hereof the said Hunt be enjoined
from selling or assigning your or-
ators said note for \$75 or thereabouts
and further that the said Hunt or
Common or either of them ^{in payment of} ^{until} a
hearing ^{as before said} ^{that they} ^{the rents as before said} ^{for collecting or} your orator
further prays that a writ of ^{supra}
in Chancery may issue
Commanding the said depts to ap-
pear and answer this Bill & to
do & perform what ^{whenever ordered} ^{decree}
this Honorable Court may make in the
premises & for such other & further
relief in the premises as your Honor
may seem meet & for so doing he will
ever pray as in duty bound - ~~to~~
Richd S. Nelson
for Couplet -

State of Illinois }
Jefferson County }

This Affidavit purporteth
Harcobius being duly sworn accor-
ding to law deposes & says that
the matters & things in the fore-
going Bill contained are
true to the best of his knowl-
edge & belief & so far as he
has heard from others, he believes
he believes to be true & further-
he says wh sworn to & sub-
scribed before me this 28th day of
September A.D. 1832

Upon which said Bill in chasing the
following file mark was inclosed

Filed August 28th 1832

John Wilburt

Att

for J. B. Turner & Co.

Upon the filing of which said Bill
a ^{word of} ~~summons~~ ~~in the words & figures~~
~~following to wit~~ - was issued from
the Clerks office of the Jefferson
Circuit Court in the words & fig-
ures following to wit:

The people
of the State of Illinois.

To the Sheriff
of Jefferson County - greeting, We com-
mand you that you summon Thomas
Hunt, Crawford Connor & Albert

Cowger if he shall be found in your
County - to be & appear before the
Judge of our Circuit-Court in &
for the County of Jefferson & State
of Illinois on the first-day of
the next term thereof, to be com-
menced & holden at the Court-
House in the town of Mount Vernon
in said County on the Third Mon-
day of September next - to answer
unto Meredith Hawkins in a Bill
in Chancery - as he says and you
the this to show this writ - Witness
John Wilbanks Clerk of said Court -
at his office in Mount Vernon
this 28th day of August - in the year
of our Lord one thousand eight-
hundred & fifty two - And the
Seal of said Court - Affixed

John Wilbanks
Clerk

D. J. B. Jamieson

Upon the aforesaid writ of Summons appeared
the the following return in the words &
figures following to wit -

Recited by de-
claring a true copy of the writ to
Thomas Hunt & leaving a true copy
with a white-person over ten years of
age at the residence of Crawford Con-
nor & Albert Cowger after telling the
its-contents, Sept the 7th 1852

John D. Lathrop Sheriff
per W. M. Charles D. S.

And afterward, to wit: on the 25th day of Sep-
tember 1852, a decree was filed by the
said Thomas Hunt in the words and fig-
ures following, to wit:

September Term of the
Jefferson Circuit -
Court - A.D. 1852

Thomas Hunt &
Crawford Connor
vs
Meredith Haiskins } Bill in Chancery

Thomas Hunt & the
said defts by Brough & Mungale their
attys come & survey & verify all
and all manner of exceptions
to for answer to said Bill of Complaint
say that the matters & things in Com-
plaints - Bill of Complaint - as
there is set forth are not sufficient
in law to entitle said Plaintiff to
a decree against him, and that

by law said defendant is not
bound further to answer & this
they are ready to verify & said
defts pray to be hence discharged
with their costs

Baugh & Wingate
for defts

Upon which said return of the
said Thomas Hunt - the following
file made was endorsed

Filed Sept 25th 1852

John Volbantes
Clerk

And afterward to wit on the day &
year aforesaid the following return
of Crawford Connor was filed
in the words & figures following to wit

September Term of the
Jefferson Circuit
Court - A.D. 1852

Crawford Connor
Thomas Hunt -

Ats
Neddie Hawkins

And the said
deft Crawford Connor ^{Comps} & by
Baugh & Wingate - his attys
Sundry & Volving H for answer
to Complainants bill herein filed
& says that the matters & things
herein contained as herein set forth

I charged are not-sufficient-in-
law to entitle complainant
to a decree, against him &
that by the law of the land he
is not-bound further to ans-
wer & thus he is ready to sue-
by wherefore he prays judgment-
and his costs

Burch & Vongate

Sol for deft

Upon which said return of the said
Crawford Connor the following file
marks was indorsed

September 23rd 1832

John Volzantes

clerk

The following return of ~~the~~ the Albot-
Crawford Connor appears of record without
file marks being indorsed thereon
to wit;

Crawford Connor	Et al	{	Of the September Term
Wts			Of the Superior Cu-
Mordeth Hawkins			rent Court - 23 rd 1832

And the said
deft Connor pleaded
him in by Burch & Vongate
his atys for himself coming and
defends & and not confessing
any or all of the allegations in
said complaint; Bill continued
says that they are not-sufficient
in law to entitle the said

Conyat - to ruling

W. F. Vinzant
for dist -

3 - Orders of Court ——— when are
of record in this cause

Meredith Hawkins
vs.
Thomas Hunt et al

Bill in Chancery

And on that day came the Complainant herein by R. S. Nelson his solicitor, and also come the Defendants by D. Baugh^{R. F. Wingate} their solicitor. And the said Defendants file their Demurred to said Complainant's Bill. Whereupon the Court, having heard the arguments of Counsel, for and against said Demurres, and being well advised in the premises, finds the law to be with said Defs. It is therefore ordered & adjudged by the Court that said Demurres be and is hereby sustained — It is further ordered, & adjudged by the Court, that said Complainant have leave to amend his bill herein &c —

Meredith Hawkins
vs.
Thomas Hunt et al

Bill in Chancery

Now again comes the Complainant herein by R. S. Nelson his solicitor, & files his Amended Bill — And also again come the Defendants by D. Baugh^{R. F. Wingate} their solicitor, and file their Demurres, to said Complainant's Amended bill. Wherefore the Court having^{heard} the arguments of Counsel, for and against said Demurres, and being well advised in the premises, finds the Law, to be with said Defendants. Therefore it is ordered & adjudged by the Court, that said Demurres be, and the same is hereby sustained. It is further ordered & adjudged by the Court, that said Complainant's Bill, be ~~dismissed~~^{dismissed}, for want of Equity &c — And the Court further orders & adjudges that the Defs recover of said Complainant their Costs & Charges expended in & about this suit &c

State of Illinois
County of Jefferson

I John Wilbanks Clerk of the Circuit
Court in and for the County & State aforesaid, do hereby certify, that the
foregoing record is, a true & perfect copy, of the record, ~~present~~ ^{voided of Court made} and
papers filed in my office, and of the proceedings had, in the Cause
between Meredith Hawkins is Complainant and Thomas Hunt
are defendants,

In testimony whereof I John Wilbanks Clerk
of the Court aforesaid have hereunto affixed
my hand and the Seal of said Court, this
28th day of October A.D. 1852

John Wilbanks Clerk
By L.B. Lammie D.C.



Filed the 30th day of Oct. 1852
A.D. Huston, Clerk

1868

Meredith Hawkins
v.
Thomas Hunt, et al

Original entry, original
not recorded, prepared
C.P.

Harbison 3 The Bill should have
Hunt et al 3 been amended for
want of equity

Another payment of the purchase
money, nor the then taking possession
of land under a parol contract
of sale, is such part performance
as will take the contract out of
the statute of frauds in Mo.

Dean vs Valle, 2 Mo R 126

(U S Digest page 575. Sec 863)

Payment of the purchase money is
not such part performance of
a parol contract for the sale of
land as will take it out of the
statute of frauds.

Johnson vs Glancy 4 Blackf 94

(U S Digest page 575. Sec 864)

For when the vendor is in possession
at the time of his purchase, is his
continuing in possession of the premises
afterwards sufficient to
save Sec 845

But if the Vendor takes and continues
possession of the premises under the
contract, and especially if he
makes valuable improvements upon
them, this will be sufficient to
take the statute

Johnson vs Glancy 4 Blackf 94

Tobbs vs Packer 1 do 58

Morland vs Lancaster 4 " 383

Thomson vs Henry 2 Scam 218

Sec 866

In Ohio delivery of possession of land
is considered as part performance
and sufficient to take a case out

out of the statute of frauds, when
its effect is not controlled by the
facts. Waggoner vs Speck 3 Hammon 294

But the payment of the purchase
money on a contract for the sale
of land is not sufficient to
take the case out of the statute
of frauds.

Giles vs Kellon 6 Hammon 483
Pollard vs Kimer 6 " 528

In Michigan the delivery of possession
under an agreement is an act
of part performance.

Wood vs Terry Walker Ch. 501
N W Digest 576 See 869

A taking of possession by a purchaser
of land must in
order to take a case out of the
statute of frauds, be such as
would make the purchase a
trespass in the absence of the
contract.

Smith vs Smith 1 Rich. Ch 130
~~Rever~~ N W Digest 575 See 847

In South Carolina payment of
the purchase money alone is not
sufficient part performance of
a contract for the sale of land,
to take it out of the statute of frauds.
Smith vs Smith 1 Rich. Ch. 118
N W Digest 575 See 848

But payment of the purchase money
under a special contract for the
sale of land, remaining in
possession, when such possession
would make the purchase a
trust is such a part perfor-
mance as will take the case out
of the Statute of frauds,
Smith vs Smith 1 Rich Ch 130
N & Digest 575. See 849

H H H

Exchange possession is an in-
dispensable ingredient in a case
for specific performance of a
special contract for the sale of
land.

Harlet vs Harlet 6 Watts 464
Gouche vs Martin 9 " 106

Payment by a tenant not
sufficient. Lloyd vs Vindars
1 Val Tase page 1443
~~and he hits having case Law Libra 40-524-5~~
Payment of part or even all the
purchase money is not such
part performance as will take
a special contract for the sale
of land out of the Statute of
frauds. Lloyd vs Vindars,
1 Val 144 to 150
Gouche vs Martin 9 Watts, R 109

The entry of Satisfaction on a
Mortgage has no great effect
Graham v. Biddington 12 R 109

But though entry into possession with
the Vendor consistent by a purchaser
who acquires possession by that instrument
is part performance, yet con-
tinuance in possession by a tenant
who acquires possession by that instrument
of the premises at the time of the
Contract will not be considered as
part performance.

See Library 40. pages 524 & 5
and authorities there cited

Possession taken by the Vendor before
is the Vendor's possession and will
be part performance.

3 Watts & Langr. 54. 63
And if the land is in the possession
of a tenant at the time of the
Sale, and the Vendor agrees
that the rent shall be paid
to the Vendor, and the tenant
allows to the Vendor, that is
sufficient delivery of possession
according to Williams v. Sanders
& Watts & Langr. 55. 10

Meradeth Hadokins } Error to
or
Thomas Hunt et al Jefferson

The bill should have been dismissed
- for uncertainty

Bill for specific performance
of a partial Contract for the
sale of lands

1. Bill should have been dismissed
for want of Equity,

Exclusive possession is an indispens-
- able ingredient in a bill for
specific performance of a
partial Contract for the sale
of lands see 6 Watts R 467

Wheeler v. Martin 9 do 109

Sugden on Vind. 1 Val
top page 142

Possession by tenant not
sufficient &

Sugden on Vind. 1 Val
top page 143

Payment of part, or even all
the purchase money is not such
part performance as will take a
partial Contract for the sale of
lands out of the statute

Sugden on Vind. 1 Val 144 to 145

9 Watts R. 109

The duty of satisfaction has no
material effect - 9 Watts 109

2nd The bill should have been amended for uncertainty

1 It avers that complainant to actual possession and occupancy by order of Hunt, and then immediately acknowledges that never had actual possession, but that one Corryer had actual possession and summons to Common who still holds.

Again he says he actually paid off and discharged the note given to Hunt for about \$70.

And then acknowledges that he had not paid it, and offers to do so

Danels Ch Pl at 1 Vol 421

422 & 423

Stoups Eq Pl. Dec 244 to 257

Remember the proper mode to raise the question

1 Danels Ch Pl 425

Stoups Eq Pl. Dec 249 a

Again the notice to Common is uncertain.

uncertainty may be reached by general averment

Danels Ch Pl. 1 Vol 656

3

The contract between Hunt & Common was void under the act of Congress

Common & Hunt only having con-
tracted to exchange lands had
a right to record said Contract

Matter of substance may be
reached by general demurrer
Storys 1st Pl Sec 455.

On sustaining a general demurrer
the Cause is out of Court
Barlow Ch Pr 111

The bill charges that Common
fraudulently got permission
but shows no facts to
establish the fraud.

He only took permission
of his own land

The bill prays an injunction of
but is not sworn to. See Harely
Ch Pl. 3 vol 1834 note 1

Hawkins
in
Hunt et al

Baugh
for acquiescence

Murdeth Hawkins plff in error

Hunt ^{vs} Connor & Conger defts in error

error to Jefferson

The Compt^l filed his Bill against the defts alleging
that ^{by the deft} ¹⁸⁵² he purchased a tract of land of deft Hunt
verbally & paid the Consideration money
agreed upon according to Contract to s^d Hunt
that s^d Hunt thereupon in presence of witnesses
told him to take possession & to get Chaps hint
of entry of land from Conger his tenant which
he did. That Hunt ^{held} a Bond or writing obli-
gatory from one Connor for s^d land which he had
exchanged with s^d Connor for a tract s^d Hunt
& that Hunt had taken possession of the
land sold ^{to him by Connor as agent &}
made valuable improvements on it, & when
he sold the s^d land to Compt^l agreed to make
him a deed to it in the spring following, to wit
at the Jefferson Circuit Court A. D. 1852
that Compt^l took possession of land under
the Contract with Hunt & notified tenants
in possession. but that s^d Hunt & Connor
in Connor having ^{full} knowledge of the prop-
erty ^{afterward} destroyed the s^d writing, which by the
agreement made with s^d Hunt was to be
handed over to Compt^l, & s^d Connor then
by collusion with deft Conger set into possession
of the premises against his ^{& claims to legal possession to Compt^l claimant} Connor
with notice & Hunt with placed
Compt^l further states that Hunt is
insolvent & that he holds a note upon
from Compt^l for \$70 more or less & threatens
to assign the same before the same be any
duly ^{to some bona fide assignee without notice} ~~paid~~ ^{the 2^d of Dec^r 1852}
Hunt refuses to convey a title deed has been demanded.

I pay for a specific performance Was to Hunt
and that Commission be Compelled to Give in
Conveyance a state on himself ~~directly~~ to
Hunt, or to Comp^l or in case of their default
that a Commissioner be appointed to do so
for them & also pay for an information to
Comoror N. H. N. H.

conceder To this Bill there was a several
discovery for want of equity; which was
sustained by the Court & suit dismissed
by the Circuit Court. for want of equity

Rs taken for the paper used

1st The Contract between Hunt &
~~Cornes~~ Hawkins is binding in equity upon
Hunt the consideration being performed by
~~Hunt~~ Hawkins according to Contract
& he having taken possession under the
Contract & obtained the duplicate. This is
past performance & Hunt is sufficient to take the case
out of the Statute. 3 Sill 140, 157. Thornton Heirs vs. Hunt
219, 220. ~~1st~~ 2nd Scaimmon 219. 220. 4th S. Swan 588, 600.

~~There was a letter of enquiry from the Comptroller~~
~~Both sides of the Contract is within the State~~
~~a parcel larger as the land is owned~~
~~Highway Commission is not admitted by the City in case~~
~~either side is right but it has been~~
~~disregarded, & the other side is~~
~~not in dispute.~~ see 3.^d Biny 129, Freeman
 55, 68 Stewart vs Stewart 3 Watts 253, 258
 White Equity Cases 521, 522, 523 - 8 Watts & Har
 5500.

274 Hawkins is ~~certainly~~ entitled to some kind
of relief upon the Bill, even he was
not entitled to all the relief sought
for there has certainly been a fraud practiced on
him & that is the fact of relief in cases of this kind
274, 284 1st John Chas, Carter ib 130, 150

3rd Deposit of title papers is so far binding in
equity as to create a lien upon the land
of Depositor & with payment of purchase
money & possession ought & certainly to take
the case out of the Statute White Leading Case
top page 525. & Cases there cited

4th Conner had notice & is chargeable
~~with~~ with the fraud of Hunt altho he
be not guilty of any fraud himself
in fact - & so is Conner the other defts, and
a General Demurrer for want of equity ought
not to have been sustained & Bill absolutely dismissed.
5th Hawkins owing to under the circumstances
to have a lien upon the land for his
advances at all events & some kind
of indemnity against for the loss
of Hunt assuring his note & the inference
must be that the duplicate was delivered by way of
security for his money until the debt was paid by Hunt
2 Sanford 9-12 - 2 Hill & Chan 166
White Leading 457 2nd - Conner 617

W. Sturges for plaintiff
in error

Hawkins
13 B
Hunt Fall

stephens
& friends

Rebbon for pleff. in una
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