

delay, that it is released or satisfied. It is not very difficult to conceive a reason why the legislature may not have intended to embrace decrees presumed, from efflux of time, to be executed or satisfied, and to extend to them the summary remedy provided by the act for the case of abatements caused by death. In the latter case, the event—the death of the party—is one which no diligence or precaution on the part of the suitor can guard against; whilst, in the former, it is his own fault if he suffer his decree to become dormant by lapse of time. It is true, this delay is not unfrequently the result of forbearance on the part of the creditor; but still, until the parties are brought before the court and heard, the legal presumption, when the specified period from the date of the decree has run out, is, that it has been executed or satisfied. *Mullikin vs. Duvall*, 7 G. & J., 358, 359.

Thinking, then, after a careful consideration of the act of assembly, that it does not embrace this case, which is the case of a decree become dormant by lapse of time, as well as abated by the death of the defendant, and that a bill of revivor would be the most appropriate remedy, I shall dismiss the petition of the complainant, though without costs, the case being one of the first impression.

[No appeal was taken from this order.]

HARRIET A. BEARD
 vs.
 JOHN H. LINTHICUM ET AL. } DECEMBER TERM, 1848.

[STATUTE OF FRAUDS—PART PERFORMANCE—SPECIFIC PERFORMANCE.]

It has been repeatedly remarked by eminent judges, that the disposition, which at one time existed to relax the statute of frauds, should be opposed; and, that the courts should take a stand against any further encroachment upon its provisions.

A party who seeks to take a case out of the statute on the ground of part performance of the contract, must make out, by clear and satisfactory proof, the existence of the identical contract, charged in the bill.