

THE CHANCELLOR:

This, as has been remarked, is a bill for the specific performance of an agreement, and is, therefore, an application to the sound discretion of the court, which withholds or grants relief according to the circumstances of each particular case, as it presents itself. The discretion it is true, is not arbitrary and capricious, but sound and reasonable; adapting itself to, and being governed as far as practicable by general rules and principles, when those rules and principles are not in conflict with the justice of the case between the parties. There would seem to be no doubt, that when a court of chancery is called upon to exert its extraordinary jurisdiction in compelling the specific performance of contracts, though it is not entirely exempt from those general principles of equity which have been found by experience best and most surely to advance the aims and ends of justice, there is nevertheless more freedom in its action than when exercising its ordinary powers. *St. John vs. Benedict*, 6 *Johns.*, Ch. R. 111. *Seymour vs. Delancy*, *ib.* 223. *Geiger et al. vs. Green*, decided by the Court of Appeals at December term, 1846. "Unless the court is satisfied," says Chancellor Kent, "that the contract is fair and just, and equal in all its parts, and founded on an adequate consideration, it will not, by the interposition of its extraordinary power, order it to be executed;" and this seems to be the established doctrine upon the subject.

If an agreement is deficient in either fairness, justice, or certainty, its specific execution will not be decreed; and hence a stronger case is required on the part of the plaintiff, asking a decree for the specific performance of a contract, than is required of him who resist such decree. 2 *Story's Eq.*, sec. 769, 770.

And in addition to the elements of fairness, justice, and certainty, the agreement must be mutual before the power of the court to order its specific performance can be successfully invoked; and indeed it may be well doubted, whether a contract can be considered in any respect fair and just if it be not mutual. "I have no conception," says Lord Redesdale in 1 *Sch. & Lf.* 18, "that a court of equity will decree a specific per-