

contract or to force the Defendant to carry out the trust assumed by him when he entered into the agreement, under this contract whereby the Complainant gave up all his right and possession to said farm on a special pledge of the farm or a part of the proceeds of the sale thereof to pay this sum of Two Thousand dollars the Defendant undertook and obligated himself in consideration thereof to sell the same and so apply a part of the proceeds, the Defendant thus assumed and took upon himself the trust of selling the farm and applying a part of the proceeds to pay this debt or claim. This duty on the part of the Defendant, I think may be enforced in a Court of Equity if however it be considered merely a contract or agreement between the parties that Edwin should give up all his claim against the said Thomas and give to him possession of the farm and personal property on condition that Thomas should take possession of said property pay Edwin Five hundred dollars and then sell the farm and out of the proceeds pay him Two Thousand dollars more, I still think a Court of Equity has jurisdiction to enforce a specific performance of the contract. In the case of "Sullivan et al vs Duck Esq of Bowie 1 Md. Ch. Dec. 59" the Court of Chancery enforced a contract where the crops on hand and growing crops of a planter had been pledged to pay advances made to him by his Commission Merchant, in the same report "Covings vs Baldwin & Wheeler 132" it is said "that if a party has succeeded in proving a contract and in showing that it has been in part performed he is entitled to have it specifically executed", in the case now before the Court the contract is in writing under seal and admitted its performance in full by the Complainant and the fact performance by the Defendant although not denied is proved by the testimony. "The specific execution of a contract in Equity is a matter not of absolute right in the party but of sound discretion in the Court" In "Swort et al vs Rea & Anderson 19 Md 398" it is said where a contract respecting Real Property is in its nature and circumstances unobjectionable it is as much a matter of course for Courts of Equity to decree a specific performance of it as it is for a Court of Law to give damages for a breach of it, and in and in general it may be stated that Courts of Equity will decree a specific performance when the contract is in writing and is certain and is fair in all its parts and is for an adequate consideration and capable of being performed". The contract in this case possesses all these requirements it is in writing is fair in all its parts for an adequate consideration and is certainly capable of being performed, the proof shows that the Defendant has since the said agreement made no bona fide effort to sell the farm, that it is very desirable and valuable property and might easily have been sold had a proper effort been made for that purpose, I think under all these circumstances the Complainant is entitled to such relief as this Court can render and will decree accordingly. It is therefore this 27th day of August A. D. 1873 by the Circuit Court for Frederick County as a Court of Equity and by the authority thereof adjudged ordered and decreed that Thomas Johnson the Defendant pay or bring into this Court to be paid unto the Complainant the sum of Two Thousand dollars current money with the interest thereon from the 22nd day of April A. D. 1869 until paid, brought in as aforesaid together with the Complainant's costs of this suit to be taxed by the Clerk of this Court and it is further ordered adjudged and decreed that unless the Defendant shall pay or bring into this Court to be paid unto the Complainant the aforesaid sum of money with the interest and costs as aforesaid on or before the 9th day of December A. D. 1872 the aforesaid Land and farm called "Harmony Grove" or so much thereof as may be necessary to discharge