

not act as the agents, or with the consent or knowledge of Gilbert Murdock; that they together drove some sheep to graze in a field

Edward Norwood's possession, as stated in the bill and admitted in the answer, under the agreement aforesaid. And the said Edward in like manner shall convey to the said Samuel Norwood and his heirs, all the other part of the said United Friendship, now in possession of said Samuel, as stated in the bill and admitted in the answer. And the intent of this decree, conformably to the agreement of the parties, is, that the branch from the two sycamores, or from the place where they stood in case they are not now standing, near the mouth of the dry run, shall be the division line, until it intersects the road to the falls: that the next line for division, shall be the road towards Baltimore to the top of the hill; thence the dividing line shall run to the head line, so as to make equal quantity of wood and land to each party: and that the part of Edward Norwood shall be that part on which the new buildings stand.

The agreement aforesaid, for a division, does not contain such precision as might be wished, even with respect to the division of the land: but as the parties each state a possession for many years under the agreement; and by experience it can be made certain: and as justice cannot be done without enforcing the said agreement, or giving it validity, so far as may be, the Chancellor conceives, that to say it is such an agreement as this Court cannot enforce, would be a disgrace to the Court. Whether or not indeed, the Court has jurisdiction: and whether or not it shall use its discretion in exercising that jurisdiction, must frequently depend on the mere circumstances, which distinguish one case from another. Let it only be considered what would be the situation of the parties in the present case, if the Court should determine, that notwithstanding the agreement, the parties are to be deemed tenants in common, each liable to a suit for profits, &c. But as to the other part of the agreement, that the profits of the ferry be equal, it does not appear to the Chancellor, that it is definite and certain enough to ground a decree, definite and certain as every decree ought to be: that is to say, this Court cannot pass a decree directing Samuel Norwood to provide such a boat, such and so many hands, such ropes and other materials, specifying and particularizing all, as might appear proper for carrying on the ferry to advantage. This Court cannot do this, because the agreement specifies nothing; and because this Court certainly cannot make, change or new model an agreement. But as nothing is more clear to the Chancellor, than that the meaning of the agreement was that each party should take one-half of the profits of a ferry to be carried on at the place where the ferry, which was the subject of the agreement, was carried on, or so near it, as to enjoy the custom which that ferry would have enjoyed: the Chancellor thought proper to decree as he has done with respect to the profits.

And it is further Decreed, that the defendant Samuel Norwood, be, and he is hereby enjoined to permit the said Edward Norwood to take and to pay to the said Edward weekly, one-half of the profits arising from any ferry, by the said Samuel carried on, at the place where the ferry mentioned in the bill was kept, or so near the place, as to take custom which would otherwise go to any ferry kept at said place; and that the said Samuel Norwood, be further enjoined not to disturb, molest, or interrupt the said Edward Norwood in the enjoyment of one-half of the profits of such ferry, or in carrying on a ferry at the said place, in case the said Edward shall think proper to provide for carrying on the same, on the said Samuel's refusing or neglecting to carry the same on jointly with the said Edward, or singly, allow-