

every respect, it will refuse to interfere, but leave the party to his remedy at law, for a compensation in damages. 2 *Story, Equity, secs.*, 769, 770; *Carberry vs. Tannehill*, 1 *Har. & Johns.*, 224; *Seymour vs. Delancey*, 2 *Johns. Ch. Rep.*, 222.

Now, what is the nature of the application in the present case, and how is the court to afford the redress which is asked of it? The promise charged in the bill, and established by the evidence—if indeed any promise is shown—was to the surviving complainant and his late wife, then Miss Somerville, and was unquestionably intended, if made at all, to provide for them, and their children, if any should be born, a support. But the wife is dead, and there was no issue of the marriage, and the surviving husband now claims to have this contract specifically enforced for his exclusive benefit, although he has received, in another form, and by the will of his grandfather, property to a much larger amount. The contract asserted in the bill, it will be observed, is not merely a contract to convey title to a certain parcel of land, but embraces an engagement to stock it—to pay the debts of the grandson—and support him and his family, for the first year after his marriage. Now, this contract, if enforced at all, is, as is said in the cases, to be enforced, *ex vigore*, and with unmitigated severity. It must be carried into execution in all its parts, though a part of the consideration has unquestionably failed, by the death of the wife, childless; as it is impossible to suppose, if the grandfather ever did make such a binding engagement as is contended for, that the wife and children were not in his contemplation, and constituted, in part at least, the motive for his promise. It seems to me eminently proper, that a case like this, should be sent to law, where, in the language of Chancellor Kent, in *Seymour and Delancey*, “relief can be afforded in damages, with a moderation agreeably to equity and good conscience, and where the claims and pretensions of each party, can be duly attended to, and be admitted to govern the assessment”—and in this case, there is a peculiar reason why the powers of the court should not be exerted in the form, in which it is applied to. The contract we have seen, is not confined to real estate, but extends to goods and chattels,