

And, it is not only necessary to take a case out of the statute, that the acts done should be clear, and definite, and referrible exclusively to the contract sought to be enforced, but the contract should also be established, by competent proofs, to be clear, definite, and unequivocal in all its terms. If, says Mr. Justice Story, "the terms are uncertain, or ambiguous, or not made out by satisfactory proofs, a specific performance will not (as indeed upon principle it should not) be decreed." For, as observed by the same judge, "one of the most important objects of the statute, was, to prevent the introduction of loose and indeterminate proofs, of what ought to be, solemn contracts." 2 *Story's Equity*, sec. 764.

It was said by Chancellor Kent, in the case of *Phillips vs. Thompson*, 1 *Johns. Ch. Rep.*, 131, that, to entitle a party to take a case out of the statute, on the ground of part performance of the contract, he must make out by clear and satisfactory proof, the existence of the contract as laid in the bill, and the act of part performance, must be of the identical contract set up by him. It is not enough, that the act is evidence of some agreement, but it must be unequivocal and satisfactory evidence of the particular agreement charged in the bill. The act must be such as the party would not have done, unless on account of that very agreement, and with a direct view to its performance. There must be no equivocation and uncertainty in the case.

In the subsequent case of *Parkhurst vs. Van Cortlandt*, same volume, page 284, the Chancellor remarked, that the doctrine of *Phillips vs. Thompson*, was undoubtedly the sound doctrine, though there may be occasionally a case, or *dictum*, which seems to impair it, and that the tendency of the latter cases, is to prefer giving the party *compensation in damages*, instead of a specific performance.

In this case, the bill alleges, that the possession was given, and taken, in part execution of the agreement; but the answer explicitly denies this, and states, that the possession so delivered, and received, is to be referred to an entirely different agreement. The question, therefore, is, has the complainant suc-