

ceeded in proving, by clear and satisfactory evidence, not only the existence of the contract, as laid in his bill, but has he shown a part performance of that identical agreement? It would seem to be clear in this case, that the contract of sale about which these parties were negotiating, was not intended to rest in parol. It was designed to have been reduced to writing, as is shown by the two papers exhibited with the bill and answer; and it is not easy to understand, if the terms were all adjusted, and no impediment existed to the complete consummation of the contract, why it was not in fact reduced to writing.

The Chancellor after alluding to the denial by the defendants, as above stated, of their alleged acceptance of the terms of the agreement as reduced to writing, by the complainant, and to the above account of the transaction, as given by them, said: now, unless this is true, or unless some difficulty existed to the consummation of the agreement, it is not easy to imagine a plausible reason, for the failure of the parties to put their contract in the form which the statute requires. And apart from the inference thus arising against the completion of the contract, he said he thought there was a want of such clear evidence of its terms, and of the act of part performance, as would alone justify the court in decreeing a specific execution.

The contract to be proved, said he, must be the identical contract charged in the bill, and this must be the same with the one partly performed; and as Chancellor Kent says, there must be no equivocation or uncertainty in the case; the plaintiff cannot get the relief which he asks for, unless he has clearly established the contract as charged, and also a part performance of the same contract.

The bill in this case, charges a particular agreement, the terms of which were reduced to writing, and though not signed by, were, as alleged, exhibited to, and approved by the defendants. And it also charges a part performance of this agreement. The answer positively denies both the agreement and the act of part performance, and exhibits another paper, varying in some respects from the paper filed by the complain-