

be warranted ; but the court does not now propose to decide the point, as even if the amendment be authorized, or the bill had originally taken the shape now proposed to be given to it, still, I think the plaintiff cannot have a decree, because she has not laid before the court that clear, definite and unequivocal proof of the contract in all its terms, which the rule requires.

So far as the bill, in this case, charges an agreement by the defendant to secure the payment of the purchase money of the land by a mortgage of slaves, there is a total and absolute failure of evidence, not a witness having spoken upon the subject, nor a single circumstance having been shown, from which such an agreement can be fairly inferred. It is true, some one or more of the witnesses do say something about the plaintiff's intestate having complained of the sale by the defendant of a slave ; but the answer discloses a sufficient reason for this ; and independent of the answer, it would surely be a random conjecture from this isolated and inconclusive circumstance, to come to the conclusion that the defendant had agreed to give a mortgage upon the slaves in question, to secure the payment of the purchase money of the land. It is surely a pertinent inquiry to ask, if such an agreement was made, why was not the mortgage given ? There was unquestionably abundant time, and if the contract of sale had been definitively settled, and the terms agreed upon, it is difficult to conceive a sufficient reason for the non-execution of the mortgage.

I regard, therefore, this charge in the bill as wholly unsupported by the proof, and the rule being, that the identical contract in all its parts as set up in the bill, must be proved, it would follow that a failure of evidence in this particular would be fatal to the complainant's prayer for a specific performance.

But, conceding that this part of the contract is independent and separate from the residue, or that the giving the mortgage simply referred to the mode of payment ; or that for any other reason, the plaintiff may have a specific execution of the residue of the agreement if proved, laying the stipulation about the mortgage out of view, still, I think, the complainant has failed to show herself entitled to the relief she asks for.