

JOHN SULLIVAN ET AL. }  
 VS. }  
 TUCK, EX'R OF BOWIE. } JULY TERM, 1847.

[SPECIFIC PERFORMANCE—LIEN ON GROWING CROPS—REMEDY AT LAW—DAMAGES.]

The defendant's testator entered into a contract with the complainants by which they were to become his agents for the sale of his crops, advance him money and accept his drafts, for the payment of which he pledged his crops on hand, and the growing crops of the year 1847. Upon the faith of this agreement, complainants made large advances to testator, and at the time of his death, which occurred in January, 1848, he was largely indebted to them. Upon a bill, by complainants, claiming a *lien* on the corn and tobacco in hand, and on the crop of wheat sown in the fall of 1847, and to enforce the specific performance of this contract, it was **HELD—**

That this was a positive agreement on the part of the testator to send to complainants, to cover their advances to him, his crops of wheat, tobacco and corn, which would be marketable in the year 1847; and also, the wheat crop seeded in that year. And that this court would enforce its specific execution.

That the *lien* founded on the relation of the parties, as factor and principal, would not apply to this case; that *lien* being merely the right to *retain* a thing, of which the party retaining must have either the actual or constructive possession. The plaintiffs' title to relief, therefore, depends upon the contract established by the letters of the testator, and the facts appearing by the pleadings.

Courts of equity do not enforce the specific performance of contracts relating to personal property, with the same facility and universality as those relating to real estate: because, in the former case, courts of law usually afford a complete remedy.

But whenever a violation of the contract cannot be correctly estimated in damages, or wherever, from the nature of the contract, a specific performance is indispensable to justice, a court of equity will not be deterred from interfering, because personal property is the subject of the agreement.

The expenses in getting the crops ready for market should be paid out of the proceeds of sale.

[This bill was filed for the specific performance of a contract entered into by the defendant's testator, Robert W. Bowie, of Prince George's county, with the complainants, trading under the firm of John Sullivan and Sons, in Baltimore. The complainants agreed to become the agents of the deceased for the sale of his crops; to advance money, and to accept his drafts,