

JOHN ALLEN  
 vs.  
 WILLIAM BURKE.

} DECEMBER TERM, 1849.

[INJUNCTION—SPECIFIC PERFORMANCE—PRACTICE.]

Upon a bill for a specific execution of an agreement and an injunction, it is clear, that if upon the plaintiff's case, as made out by his bill, he is not entitled to a specific execution of the agreement set up by him, he cannot be entitled to an injunction, which is only ancillary to the principal object of the suit.

It is well settled that the plaintiff must recover upon the case made by his bill, and that a defendant, although he answers it, may, at the hearing, object, that the case made in the bill does not entitle the party to equitable relief.

The bill seeks the specific execution of a parol contract or agreement for a lease of certain premises, in the city of Baltimore, occupied and used for the purpose of opening and exporting oysters. It avers that the agreement was entered into sometime in the month of August, 1848, and that the plaintiff was to receive for rent, all the oyster shells produced from the establishment, be their value more or less, but does not state *when the lease was to expire*.  
 HELD—

That the contract was not set out in the bill, with the necessary degree of certainty to enable the court to decree its specific execution, one of the essential terms of the agreement, viz. how long the lease was to continue not being specified.

[THE bill was filed on the equity side of Baltimore County Court, on the 7th of December, 1849, by Allen, the complainant, and states, that sometime in the summer of 1848, about the month of August, the defendant, Burke, entered into a parol contract with the plaintiff, by which the defendant stipulated and agreed, in consideration of the plaintiff's leasing to him certain premises on Union Dock, in the city of Baltimore, (and of which the defendant in pursuance of such renting, took possession, and now occupies as a part of his establishment for opening and exporting oysters,) that the plaintiff should have and receive therefor all the oyster shells produced from said establishment, be there more or less, as rent for the premises aforesaid.