

SPECIFIC PERFORMANCE—*Continued.*

- performance of a contract within the statute of frauds, not in writing, when it is fully set forth in the bill, and is confessed by the answer of the defendant, and the statute is not relied on as a defence. *Winn & Ross vs. Albert and Wife*, 169.
2. Courts of equity have properly required, that every agreement shall be clearly and explicitly established before they will lend their aid to enforce it. *Gill vs. McAttee*, 256.
  3. It is a conceded principle, that the jurisdiction of a court of equity, to decree the specific execution of contracts, is not a matter of right in the parties, and to be demanded *ex debito justitiæ*; but applications invoking this power of the court, are addressed to its sound and reasonable discretion, and are granted or rejected according to the circumstances of each case. *Duwall vs. Myers*, 401.
  4. The court must be satisfied that the contract sought to be enforced, is fair and just, and reasonable, and equal in all its parts; and it is now established, that unless there is to be found in the contract itself the essential ingredient of mutuality, a court of equity will not compel its specific execution. *Ib.*
  5. The right to a specific execution of a contract, so far as the question of mutuality is concerned, depends upon whether the agreement itself is obligatory upon both parties, so that upon the application of either against the other, the court would coerce a specific performance. *Ib.*
  6. A party not bound by the agreement itself has no right to call upon this court to enforce performance against the other contracting party, by expressing his willingness in his bill to perform his part of the agreement. His right to the aid of the court does not depend upon his subsequent offer to perform the contract on his part, but upon its originally obligatory character. *Ib.*
  7. Where a party relies upon part performance, as a ground for the specific execution of a contract, he must show by clear evidence that the acts constituting such part performance are referrible exclusively to the identical contract set up in his bill, or they will not avail him. *Ib.*
  8. 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. *Allen vs. Burke*, 534.
  9. It is well settled that the plaintiff must recover upon the case made by his bill, and that a defendant, although he answers, may, at the hearing, object, that the case made in the bill does not entitle the party to equitable relief. *Ib.*
  10. 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 opening and exporting oysters. It avers that the agreement was entered into some time in the month of August, 1848, and that the plaintiff was to receive for rent, all the oyster-shells produced