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Equity -- Specific Performance of Chattel Contracts

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Equity—Specific Performance of Chattel Contracts

Historically, courts of equity refused to grant specific performance of contracts for the sale of personal property on the theory that money damages would enable the plaintiff to purchase other property of like kind and quality.[1] This approach did not arise from any difference between personal and real property, but from the theory that equity will not interfere where there is an adequate remedy at law for damages.[2] But, upon a showing that the particular chattel had some special value to the owner over and above any pecuniary estimate, such as a *pretium affectionis*,[3] that the chattel was unique, rare, and incapable of being reproduced by damages,[4] or that it was not readily purchasable in the market,[5] these courts granted specific performance on the ground that the remedy at law was inadequate.[6]

Certainly, this inflexible approach was the most characteristic feature of the early equity courts in this area, and many think it still exists today.[7] The attitude of the Virginia court[8] in a recent case, however, stands in sharp contrast to this view. That court in granting specific performance stated:

> "Indeed, the modern disposition is to be less technical in the application of this principle, and where a special need on the part of the plaintiff, and at least a temporary monopoly on the part of the defendant, justify its application, the remedy is allowed for breach of contracts for the sale of personal property for which damages might otherwise be adequate."[9]

[1] 2 POMEROY, EQUITABLE REMEDIES § 748 (2nd ed. 1919).

[2] Heidner v. Hewitt Chevrolet Co., 166 Kan. 11, 13, 199 P. 2d 481, 483 (1948).

[3] Lewman & Co. v. Ogden Bros., 143 Ala. 351, 42 So. 102 (1904); Omaha Lumber Co. v. Co-operative Inv. Co., 55 Colo. 271, 133 Pac. 1112 (1913); Steinway & Sons v. Massey, 198 Ky. 265, 248 S. W. 884 (1923); Kacurek v. Matychowiak, 185 S. W. 740 (Mo. 1916); Chabert v. Robert & Co., Inc., 273 App. Div. 237, 76 N. Y. S. 2d 400 (1948); McMartin v. McMartin, 59 N. Y. S. 2d 449 (1946); Titus v. Empire Mink Corp., 17 N. Y. S. 2d 909 (1939); Butler v. Wright, 186 N. Y. 259, 261-62, 78 N. E. 1002, 1003 (1906); Welch v. Chippewa Sales Co., 252 Wis. 766, 31 N. W. 2d 170 (1948). 4 POMEROY, EQUITY JURISPRUDENCE § 1402 (4th ed. 1919).

[4] Southern Iron & Equipment Co. v. Vaughan, 201 Ala. 356, 78 So. 212 (1918); Koeling v. Bank of Sullivan, 220 S. W. 2d 794 (Mo. App. 1949); Spoor-Thompson Mach. Co. v. Bennett Film Laboratories, 105 N. J. Eq. 108, 147 Atl. 202 (1929).

[5] Emirzian v. Asato, 23 Cal. App. 251, 137 Pac. 1072 (1913) *aff'd* 177 Cal. 493, 171 Pac. 90 (1918); Carolee v. Handelis, 103 Ga. 299, 29 S. E. 935 (1898); Cochrane v. Szpakowski, 355 Pa. 357, 49 A. 2d 692 (1946); Strause v. Berger, 220 Pa. 267, 270, 69 Atl. 818, 819 (1908); Shunney v. R. I. Hospital Trust Co., 80 R. I. 370, 96 A. 2d 828 (1953); Behnke v. Bede Shipping Co., 1927 1 K. B. 649.

[6] 4 POMEROY, EQUITY JURISPRUDENCE § 1401 (4th ed. 1919).

[7] Heidner v. Hewitt Chevrolet Co., 166 Kan. 11, 199 P. 2d 481 (1948); Koelling v. Bank of Sullivan, 220 S. W. 2d 794 (Mo. 1949); Chabert v. Robert & Co., 273 App. Div. 237, 76 N. Y. S. 2d 400 (1948); Cochrane v. Szpakowski, 355 Pa. 357, 49 A. 2d 692 (1946); Shunney v. R. I. Hospital Trust Co., 80 R. I. 370, 96 A. 2d 828 (1953); Welch v. Chippewa Sales Co., 252 Wis. 766, 31 N. W. 2d 170 (1948).

[8] Thompson v. Commonwealth of Virginia, 197 Va. 208, 89 S. E. 2d 64 (1955).

[9] *Id.* at —, 89 S. E. 2d at 67.

Against this background an examination of some of the cases to discover whether courts have maintained their early inflexible approach, or have grown in flexibility so as to adjust the remedy of specific performance to the needs of the particular facts of each case seems worthwhile.

Machinery

Spoor-Thompson Machine Co. v. Bennett Film Laboratories,[10] a New Jersey case, demonstrates that the view denying specific performance of chattel contracts is yet very much alive. Plaintiff sought, under a contract with the defendant, to compel the delivery of certain film-developing machines. A preliminary injunction to prevent sale to others was denied; the court said that specific performance could not be granted except in cases where damages at law would be inadequate, as in the case of heirlooms and other articles[11] which are incapable of being replaced and are prized for their associations rather than their intrinsic value. The fact, important in industry, that the machines could not be secured from others except after a long period of time, and at considerable expense, was not regarded as justification for the action of a court of equity.

Other cases, however, show that some courts have responded to the needs of businesses.[12] In a recent Virginia case,[13] the state entered into a contract with defendant for the construction and delivery of two spare voting recorder units and two vote counters. The defendant failed to deliver them, and the state instituted proceedings for specific performance of the contract, alleging that the machines could not be obtained from anyone other than the defendant. The court awarded the relief sought, saying that specific performance, while not the usual remedy, will be granted where necessary to do complete justice between the parties. Even though there was evidence that the machines could be built by a first-class mechanic, the court said that the burden of securing such construction should be on the defendant rather than on the plaintiff.[14]

An earlier case from Massachusetts[15] was cited with approval by the Virginia court.[16] There, defendant refused to furnish the plaintiff

[10] 105 N. J. Eq. 108, 147 Atl. 202 (1929).

[11] This class includes articles of such great rarity and value as paintings, statues, antiques, furniture, and jewelry. 4 POMEROY, EQUITY JURISPRUDENCE § 1402 (5th ed. 1941).

[12] Union Pacific Ry. Co. v. Chicago, Rock Island & Pacific Ry. Co., 163 U. S. 564 (1896); Board of Comm'rs of Mattamuskeet Drainage District v. A. V. Wills & Sons, 236 Fed. 362 (E. D. N. C. 1916); Johnson v. Brooks, 93 N. Y. 337 (1883), followed in Reo Stores v. Kent Stores, 118 N. Y. S. 2d 281 (1952).

[13] Thompson v. Commonwealth of Virginia, 197 Va. 208, 89 S. E. 2d 64 (1955).

[14] *Id.* at —, 89 S. E. 2d at 68.

[15] Adams v. Messenger, 147 Mass. 185, 17 N. E. 491 (1888).

[16] Thompson v. Commonwealth of Virginia, 197 Va. 208, —, 89 S. E. 2d 64, 68 (1955).

with certain injectors for steam boilers, as agreed. The court granted specific performance saying:

> "Although the party aggrieved might have obtained damages which would have been sufficient to have enabled him to pay for constructing them, and although the work to be done necessarily involved engineering skill as well as labor, he was not bound to assume the responsibility of the labor of doing that which the defendant agreed to do."[17]

To reflect the true attitude of these courts it is not enough to observe that factors other than the peculiar nature of the chattel itself are considered in determining the appropriateness of specific performance as a remedy. It should also be noted that in both cases in carrying out the decree, possible supervision by the court of personal services involving skill, labor, and judgment would be required. Further, in the Virginia case,[18] it seems significant that the court might have granted relief on the theory that the product was unique and unavailable in the market.

Commodities

The realistic approach taken by the Virginia and Massachusetts courts[19] is not confined to the area of machinery. For example, where plaintiff sought equitable aid in enforcing defendant's contract to sell and deliver all his lead-silver ores, concentrates, or slimes to the plaintiff, the Federal District Court of Oregon[20] said:

> "It can no longer be maintained that a suit will not lie for specific preformance of a contract respecting personalty. The underlying thought touching such a suit is whether the suitor has a plain, speedy, adequate and complete remedy at law. If he has, he cannot have specific performance."[21]

This result does not rest on the uniqueness of the chattel, but enables the court to recognize plaintiff's business needs. However, many courts still adhere to the proposition that specific performance will not be granted unless the commodity concerned has some peculiar, unique, or special character which cannot be measured in damages.[22]

[17] Adams v. Messenger, 147 Mass. 185, 189, 17 N. E. 491, 495 (1888).
[18] Thompson v. Commonwealth of Virginia, 197 Va. 208, 89 S. E. 2d 64 (1955).
[19] Adams v. Messenger, 147 Mass. 185, 17 N. E. 491 (1888); Thompson v. Commonwealth of Virginia, 197 Va. 208, 89 S. E. 2d 64 (1955).
[20] American Smelting & Refining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 248 Fed. 172 (Ore. 1918).
[21] *Id.* at 182.
[22] Southern Iron & Equipment Co. v. Vaughan, 201 Ala. 356, 78 So. 212 (1918) (iron rails); Fraser v. Cohen, 159 Fla. 253, 31 So. 2d 463 (1947) (bananas); Steinway & Sons v. Massey, 198 Ky. 265, 248 S. W. 884 (1923) (piano); Chabert v. Robert & Co., Inc., 273 App. Div. 237, 76 N. Y. S. 2d 400 (1948) (containers for oil); Titus v. Empire Mink Corp., 17 N. Y. S. 2d (1939) (mink).

Denial of relief because the product is not unique but is obtainable in the open market does not consider the delay or risk which may be incurred in obtaining such goods. It, in effect, forces the plaintiff to sell his contract rights for money damages, while enabling the defendant wrongdoer, at his option, to perform or pay money damages.[23] These factors are important and the policy requiring consideration of them seems sounder.

Stocks and Bonds

The settled rule in this country and in England seems to be that contracts for public securities such as government stocks and bonds, will not be specifically enforced, because they can usually be obtained in the market.[24] But in England, contracts for the sale of railway and other business corporation shares will be specifically enforced,[25] while in this country, the weight of authority denies such relief unless it is shown that similar shares are not available in the open market.[26] The reason for this difference probably results from the difficulty experienced in the transferring of stocks and bonds in England as contrasted with the relative ease of such transfer in this country.[27]

However, even in this country specific performance is granted where there is a showing that the stock is of a peculiar or special value to the plaintiff; that it is not of easily ascertainable value; that it is unavailable in the market;[28] or that the stock is needed to enable the purchaser to obtain control of the corporation.[29]

[23] 2 STORY, EQUITY JURISPRUDENCE § 994 (14th ed. 1918).

[24] 4 POMEROY, EQUITY JURISPRUDENCE § 1402 (5th ed. 1941).

[25] Shaw v. Fisher, 2 De G. & S. 11, 64 Eng. Reprint 5 (1848). See generally 22 A. L. R. 1037, supplemented by 130 A. L. R. 923.

[26] General Securities Corp. v. Welton, 223 Ala. 299, 135 So. 329 (1931); Gilfallan v. Gilfallan, 168 Cal. 23, 141 Pac. 623 (1914); Rimes v. Rimes, 152 Ga. 721, 111 S. E. 34 (1922); Fitzgibbons v. White, 296 Mass. 468, 6 N. E. 429 (1937); Richardson v. Lamb, 253 Mich. 659, 235 N. W. 817 (1931); Last Chance Ranch Co. v. Erickson, 82 Utah 475, 25 P. 2d 952 (1933).

[27] This difficulty in transferring stocks in England is because the English companies are usually joint-stock associations whose powers are derived from and regulated by articles of association or deeds of settlement. These articles and deeds often restrict or make the methods of transfer cumbersome. POMEROY, SPECIFIC PERFORMANCE OF CONTRACTS § 18 (3rd ed. 1926).

[28] Gilfallan v. Gilfallan, 168 Cal. 23, 141 Pac. 623 (1914); Baruch v. W. B. Haggerty, Inc., 137 Fla. 499, 188 So. 797 (1939); Rimes v. Rimes, 152 Ga. 721, 111 S. E. 34 (1922); Smurr v. Komer, 301 Ill. 179, 133 N. E. 715 (1921); Talamini v. Rosa, 257 Ky. 228, 77 S. W. 2d 627 (1934); Goodhue v. State Street Trust Co., 267 Mass. 28, 165 N. E. 701 (1929); Richardson v. Lamb, 253 Mich. 659, 235 N. W. 817 (1931); Model Clothing House v. Dickinson, 146 Minn. 367, 178 N. W. 957 (1920); *In re* Rosenthal's Estate, 335 Pa. 49, 6 A.2d 858 (1939); Florence Printing Co. v. Parnell, 178 S. C. 119, 182 S. E. 313 (1935).

[29] Henry L. Doherty & Co. v. Rice, 186 Fed. 204 (N. D. Ala. 1910); Sherwood v. Wallin, 1 Cal. App. 532, 82 Pac. 566 (1905); Johnson v. Johnson, 87 Colo. 207, 286 Pac. 109 (1930); Francis v. Medill, 16 Del. Ch. 129, 141 Atl. 697 (1928); Schmidt v. Pritchard, 135 Iowa 240, 112 N. W. 801 (1907); Nason v. Barrett, 140 Minn. 366, 168 N. W. 581 (1918); Hirschman v. Casey, 121 Neb. 471, 237 N. W. 584 (1931); *In re* Rosenthal's Estate, 335 Pa. 49, 6 A. 2d 585 (1939); Bumgardner v. Leavitt, 35 W. Va. 194, 13 S. E. 67 (1891).

Thus, it appears that equity courts in this country have almost universally adopted the "unique theory" in determining the inadequacy of the remedy at law with respect to stocks and bonds. However, this seems to result in no injustice between the parties in most cases. Whether the courts would liberalize this view and hold the legal remedy inadequate where changes in business conditions affect the availability and price of the stock at the time of the action at law, or whether they have adopted an inflexible rule in this area is not clear. The latter seems more probable. But at least one case supports the first view. In a fairly late California case,[30] the court quoted with approval the following statement:

> "Indeed, it has been thought, that on contracts for stock a bill ought now to be maintainable generally in equity for a specific delivery thereof, upon the ground that a Court of Law cannot give the property, but can only give a remedy in damages, the beneficial effect of which depends upon the personal responsibility of the party."[31]

Patents and Patent Rights

The availability of specific performance in this area is based on the theory that the patent is of some peculiar and special value to the plaintiff and cannot be readily obtained in the market.[32] As this class of chattels is unique itself in that the vendor has a legal monopoly, the adoption of a more liberal policy is not necessary for specific performance to be obtained even in the most conservative courts. Even so, one court has expressly based relief upon such a liberal policy.[33]

Licenses

This class of chattel can also be said to be unique in itself, as it is not ordinarily obtainable in the market, but through the actions of third persons, over whom the court has no control.[34] The Indiana court in *Marion Trucking Co. v. Harwood Trucking, Inc.*[35] said:

> "There is no question but that the right to operate a particular part of an interstate transportation system is a unique property

[30] Karabek v. Weaver Aircraft Corp., 65 Cal. App. 2d 32, 149 P. 2d 876 (1944).
[31] *Id.* at 39, 149 P. 2d at 880. The statement quoted is that of Justice Story in 2 STORY, EQUITY JURISPRUDENCE § 994 (14th ed. 1918).
[32] E. F. Drew & Co., Inc. v. Reinhard, 170 F. 2d 679 (2d Cir. 1948); Goodyear Tire & Rubber Co. of Akron, Ohio v. Miller, 22 F. 2d 353 (9th Cir. 1927); Mississippi Glass Co. v. Franzer, 143 Fed. 501 (3d Cir. 1906); McFarland v. Stanton Mfg. Co., 53 N. J. Eq. 649, 33 Atl. 962 (1896); Whitcomb v. Whitcomb, 85 Vt. 76, 81 Atl. 97 (1911); Fuller & Johnson Mfg. Co. v. Bartlett, 68 Wis. 73, 31 N. W. 747 (1887). See also, 2 STORY, EQUITY JURISPRUDENCE § 996 (14th ed. 1918).
[33] No-Leak-O Piston Ring Co. v. Chandlee, 289 Fed. 526 (D. C. Cir. 1923).
[34] Watson Bros. Transp. Co. v. Jaffa, 143 F. 2d 340 (8th Cir. 1944); McLean v. Keith, 236 N. C. 59, 72 S. E. 2d 44 (1952); Lennon v. Habit, 216 N. C. 141, 4 S. E. 2d 339 (1939). See also, L. R. A. 1918E 597, 619-621.
[35] — Ind. App. —, 116 N. E. 2d 636 (1954).

> interest which cannot be obtained or transferred without Interstate Commerce Commission approval. Also, by way of comparison, it is obvious and axiomatic that the right to transport commodities for hire over any particular land route is as unique in character as the unique value which attaches to any particular piece of real estate and cannot be duplicated."[36]

New Jersey[37] disagrees with the granting of specific performance of contracts relating to licenses. This is due partially to its view that specific performance is an extraordinary remedy of equity and partially to the idea in that state that a license is in no sense property.[38]

Although most courts would provide equitable relief in this area, the existence of more sympathetic courts is evidenced by the fact that specific performance has been granted even where it becomes necessary for the court to supervise a business. A federal court in New York[39] specifically enforced a contract which provided for delivery to plaintiff of certain licenses and leases which were preparatory to the installation of certain machines. The court said:

> "[P]rotracted supervision of a business *should not* be assumed, but it is not true that it *cannot* be assumed. Everything depends on how insistently the justice of the case demands the court's assumption of difficult, unfamiliar, and contentious business problems. The tendency of the times is to take on harder and longer jobs."[40]

Businesses

Ordinarily specific performance will be granted for the sale of a business[41] unless the contract involved is for the sale of the "good-will" only, in which case, equity will not award relief.[42] The reason for the normal result is that ordinarily a similar business and location is unavailable in the market, and therefore, the plaintiff cannot be compensated in damages.[43] It has been held, however, that the mere fact that the contract involves a business does not, as a matter of right, permit the decree.[44]

[36] *Id.* at —, 116 N. E. 2d at 641.

[37] Rawlins v. Trevethan, 139 N. J. Eq. 226, 50 A. 2d 852 (1947); Mannion v. Greenbrook Hotel, Inc., 138 N. J. Eq. 518, 48 A. 2d 888 (1946); Navack v. Krauz, 138 N. J. Eq. 241, 47 A. 2d 586 (1946); Lachow v. Alper, 130 N. J. Eq. 588, 23 A. 2d 595 (1942); Walsh v. Bradley, 121 N. J. Eq. 359, 190 Atl. 88 (1937).

[38] Voight v. Board of Excise Comm'rs of City of Newark, 59 N. J. L. 358, 36 Atl. 686 (1896).

[39] Kerns-Gorsuch Co. v. Hartford-Fairmont Co., 1 F. 2d 318 (S. D. N. Y. 1921).

[40] *Id.* at 319-320.

[41] 49 AM. JUR., *Specific Performance* § 128 (1943).

[42] Zeigler v. Sentzer, 8 Gill & Johnson (Md.) 150, 29 Am. Dec. 534 (1836).

[43] Chamber of Commerce v. Barton, 195 Ark. 274, 112 S. W. 2d 619 (1937); Carolee v. Handelis, 103 Ga. 299, 29 S. E. 935 (1898); Brady v. Yost, 6 Idaho 273, 55 Pac. 542 (1898); Butler v. Wright, 186 N. Y. 259, 78 N. E. 1002 (1906); Cochrane v. Szpakowski, 355 Pa. 357, 49 A. 2d 692 (1946).

[44] Campbell v. Stetes, 300 Ky. 745, 190 S. W. 2d 347 (1945).

For instance, one court seems to require, before specific performance can be granted, that the contract must relate to that species of property which has a sentimental, peculiar, or unique value, such as heirlooms, portraits, furniture or antiques.[45] But opposed to this extreme position is that adopted by a court in New York[46] that the jurisdiction of equity to grant specific performance is no longer to be doubted in cases where compensation in damages will not furnish a complete and satisfactory remedy.

Building and Construction Contracts

Generally, it has been thought that specific performance of these contracts could not be decreed, because the decree would call for supervision by the court extending over a long period of time, or calling for a knowledge of technical matters which neither the court nor its officers could be expected to possess.[47] Also, it has been said that the remedy at law is ordinarily adequate compensation for the refusal to perform, because the plaintiff can have the work done by another and recover the increased costs as damages from the defendant.[48]

The English courts have established four exceptions to this rule, and in these cases specific performance will be granted; (1) where the agreement to build is defined and certain; (2) where the defendant has contracted to build on his own land and the plaintiff has a material interest therein; (3) where the defendant has agreed to build on land acquired by conveyance from the plaintiff; and (4) where there has been a part performance, and the defendant is enjoying the benefits.[49]

These exceptions have been recognized by some of the American courts, where, by reason of such circumstances, the remedy at law would be deemed to be inadequate.[50] Where public interest and convenience are at stake, courts of equity will go much further in either granting or denying specific performance, if such is in furtherance of the public interest, than they ordinarily would in cases of purely private interests.[51]

[45] *Id.* at 748, 190 S. W. 2d at 349.

[46] Johnson v. Brooks, 93 N. Y. 337 (1883), followed in Reo Stores v. Kent Stores, 118 N. Y. S. 2d (1952).

[47] Texas & P. R. Co. v. Marshall, 136 U. S. 393 (1889); Leonard v. Board of Directors of Plum Bayou Levee Dist., 79 Ark. 42, 94 S. W. 922 (1906); Stanton v. Singleton, 126 Cal. 657, 59 Pac. 146 (1899); Bomer v. Canaday, 79 Miss. 222, 30 So. 638 (1901); Ward v. Newbold, 115 Md. 689, 81 Atl. 793 (1911); Edison Illuminating Co. v. Eastern Pennsylvania Power Co., 253 Pa. 457, 98 Atl. 652 (1916). See also, 9 AM. JUR., *Building and Construction Contracts* § 124 (1943).

[48] London Bucket Co., Inc. v. Stewart, 314 Ky. 832, 237 S. W. 2d 509 (1951).

[49] 4 POMEROY, EQUITY JURISPRUDENCE § 1402 (5th ed. 1941).

[50] Herzog v. Atchison, T. & S. F. R. Co., 153 Cal. 496, 95 Pac. 898 (1908); Taylor v. Florida East Coast R. R., 54 Fla. 635, 45 So. 574 (1907); Jones v. Parker, 163 Mass. 564, 40 N. E. 1044 (1895); Beck v. Allison, 56 N. Y. 366, 15 Am. Rep. 430 (1874); McCarter v. Armstrong, 32 S. C. 203, 10 S. E. 953 (1890).

[51] Virginia Ry. v. System Federation No. 40, Railway Employees Department of the American Federation of Labor, 300 U. S. 515 (1932); Wheeling Traction Co. v. Board of Comm'rs of Belmont County, Ohio, 248 Fed. 205 (6th Cir. 1918);

The idea that the courts should not undertake supervision of construction work has been dispelled somewhat by the decision in *Board of Commissioners of Mattamuskeet Drainage District v. A. V. Wills & Sons*,[52] where the court adopted the following statement made by Chief Justice Fuller in *Union Pacific Railway Co. v. Chicago, Rock Island & Pacific Railway Co.*:[53]

> "But it is objected that equity will not decree specific performance of a contract requiring continuous acts, involving skill, judgment, and technical knowledge. . . . We do not think so. . . . It must not be forgotten that, in the increasing complexities of modern business relations, equitable remedies have necessarily and steadily been expanded, and no inflexible rule has been permitted to circumscribe them."[54]

In this area a change in policy by the courts to respond to demands for equitable relief is apparent. First, exceptions were made to a hard and fast rule by which the courts refused to undertake supervisory duties. Then, doubt was cast on the force of the rule itself by courts who, realizing a need for expanding equitable remedies, undertook supervision of complicated transactions.

Uniform Sales Act

This act, which has been patterned after the English Sale of Goods Act,[55] has been adopted in about three-fourths of the jurisdictions in this country.[56] Section 68 of the Act reads as follows:

> "Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of Equity may, if it thinks fit, on the application of the buyer, by its judgment or decree, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just."

The author of this section, Professor Williston, stated in his treatise on Sales:

> "Courts of Equity have very closely restricted their jurisdiction in regard to contracts for the sale of personal property. It would sometimes promote justice if the courts were somewhat

Edison Illuminating Co. v. Eastern Pennsylvania Power Co., 253 Pa. 457, 98 Atl. 652 (1916).

[52] 236 Fed. 362 (E. D. N. C. 1916). [53] 163 U. S. 564, 600 (1896).

[54] Board of Comm'rs of Mattamuskeet Drainage District v. A. V. Wills & Sons, 236 Fed. 362, 380 (E. D. N. C. 1916).

[55] 56 & 57 VICT. 52 c. 71 (1893). [56] Note, 27 GEO. L. J. 793 (1939).

more ready to allow specific performance of contracts to sell goods in cases where for any reason damages did not seem adequate. This section of the act will perhaps dispose courts to enlarge somewhat the number of cases where specific performance is allowed."[57]

It appears that very few courts that have considered the Act have shared the views of Professor Williston. The courts have treated the section in three different ways:[58] (1) by granting specific performance in reliance upon the Act, even though it would have been granted without the aid of the Act;[59] (2) by granting specific performance under the Act, where it would not have been granted had it not been for the Act;[60] (3) by treating the Act as having made no change in the existing law.[61] Even though there are three different interpretations of the effect of the Act, it is no longer an important factor, as few courts have even mentioned it when faced with the question of specific performance of contracts in reference to personal property.[62] This Act, if liberally interpreted, should have been construed as it was written, that being, to enlarge the scope of specific performance.

Conclusion

The adequacy test, for the most part, remains a stumbling block to specific performance of chattel contracts. However, some courts have developed a more flexible approach[63] which emphasizes the needs of the parties rather than strictly adhering to the historical approach with its few exceptions. Much of the necessity for such a test has been lost through the fusion of law and equity under the codes, and today, the needs of modern business relations call for a more flexible rule.

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[57] 3 WILLISTON, SALES § 601 (2d ed. 1924).

[58] It is to be noted that Michigan appears in all three categories.

[59] Eastern Rolling Mill Co. v. Michlovitz, 157 Md. 51, 145 Atl. 378 (1929); Krause v. Hoffman, 239 Mich. 348, 214 N. W. 146 (1927); Diamond Lumber Co. v. Anderson, 216 Mich. 71, 184 N. W. 557 (1921).

[60] Michigan Sugar Co. v. Falkenhagen, 243 Mich. 698, 220 N. W. 760 (1928); Hughbanks v. Browning, 9 Ohio App. 114 (1917); Pittenger Equipment Co. v. Timber Structures, Inc., 189 Ore. 1, 217 P. 2d 770 (1950).

[61] G. C. Outten Grain Co. v. Grace, 239 Ill. App. 284 (1925); Tales v. Duplex Power Co., 202 Mich. 224, 168 N. W. 495 (1918).

[62] Masterson, *Specific Performance of Contracts to Deliver Specific and Ascertained Goods Under the English Sale of Goods Act and the American Sales Act*, LEGAL ESSAYS IN TRIBUTE TO ORRIN KIP MCMURRAY, 793 (1939).

[63] Union Pacific Ry. Co. v. Chicago, Rock Island & Pacific Ry. Co., 163 U. S. 564 (1896); No-Leak-O Piston Ring Co. v. Chandlee, 289 Fed. 526 (D. C. Cir. 1923); American Smelting & Refining Co. v. Bunker Hill & Sullivan Mining & Concentrating Co., 248 Fed. 172 (Ore. 1918); Karabek v. Weaver Aircraft Corp., 64 Cal. App. 2d 32, 149 P. 2d 876 (1944); Adams v. Messenger, 147 Mass. 185, 17 N. E. 491 (1888); Thompson v. Commonwealth of Virginia, 197 Va. 208, 89 S. E. 2d 64 (1955).