

will be the view which every one will take of the subject who will reflect carefully upon the consequences which must result from a different tendency.

The rule is believed to be firmly established, that to entitle a party to take a case out of the statute of frauds, on the ground of part performance of the contract, he must make out by clear and satisfactory proof the existence of the identical contract laid in his bill. It is not enough that the act relied on is evidence of some agreement, but it must be unequivocal and satisfactory evidence of the contract charged in the bill. *Philips vs. Thompson*, 1 *Johns. Ch. Rp.*, 131; *Parkhurst vs. Van Courtland*, *ib.* 273; 3 *Kent's Com.* 451; 2 *Story's Equity*, sec. 764. This court has upon several occasions been called upon to express its opinion upon cases resembling in principle the present, and the conclusions to which it has arrived after a careful consideration of the subject, have been adverse to the relief asked for.

The court, if it acts at all in such cases, must act upon the entire contract as laid in the bill. It must be executed in all its parts specifically and rigorously, and hence the indispensable necessity that each and every part of the agreement set up in the bill should be clearly established by the proof. *Owens vs. Baldwin and Wheeler*, *ante*, page 120; *Waters vs. Waters*, *ante*, page 196.

Unless this can be done, it is obviously better to send the plaintiff to a court of law, where relief can be given in damages, with a moderation agreeable to equity and good conscience, and where the various pretensions of the parties can be considered by a tribunal more competent to decide upon the extent of the actual injury sustained by the non-performance of the agreement.

In the present case, the contract as laid in the bill, is conceded not to be sustained by the proof, and hence the conditional agreement to amend the bill by striking out the allegation upon the subject of interest upon the purchase money. The right to amend this bill, and especially at this stage of the proceedings, is contested, and perhaps upon an examination of the books of practice and authorities, it would be found not to