

part was to *explore* for the purpose of ascertaining the mineral wealth of the farm. There can be no doubt, I think, that the defendant never would have entered into this contract if he had believed that the working of the mines was not secured by it, and that whether they should be worked or not depended upon the discretion of the party with whom he was contracting. The contract, therefore, it seems to me, is deficient in that reciprocity of obligation, without which, a court of equity will not decree a specific performance. It appears to me difficult to maintain, that the defendant could have obtained a decree against Petherick for the specific execution of this contract to the extent which he clearly had in view in entering into it—that is, to compel Petherick to work as well as to explore the minerals, even though the title of the defendant to the farm had been entirely unincumbered. And if this is the case—that is, if there is a want of mutuality in the *remedies* as well as the rights of the parties to the contract, it would be inequitable, as said by *Lord Redesdale in Sch. & Lef.* 18, to decree a specific performance at the suit of him who is not bound; as if the rule were different, he might enforce or avoid the contract, according as his interest might incline him the one way or the other. It is much better in such cases of inequality of obligation, to refuse a specific performance, and leave the plaintiff to seek his compensation, if he has sustained damage, by an action at law; because if equity acts at all, it must, as Chancellor Kent says, “act *ex vigore*, and carry the contract into execution with unmitigated severity.”

The contract in this case, though varying of course in terms, and in some respects perhaps, in substance, from the contract in the case of *Geiger vs. Green*, decided by the Court of Appeals, yet in other, and in some very essential, particulars, it very much resembles that case. In that case the contract gave the complainant *the privilege* of digging and removing ore from the farm of the defendant, at twenty-five cents per ton, for the privilege of the ground—leave also to build a house on said land, the workmanship to cost \$100—the materials to be got on the land of the defendant at the expense of the plaintiff.