Outlines of specific performance

Bowen H S
OUTLINES

OF

SPECIFIC PERFORMANCE.

BY

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RESULTS during 1885.
Solicitors’ Examinations.—Pass—Out of 29 Pupils in all, 26 passed at the first trial.
Honours—The “first” Prizeman in January, the “second” in April.
Bar Examinations.—Of eleven sent up nine passed.

RESULTS, 1886.
January Final.—Six sent up, five passed, one taking 2nd class Honours.
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PREFACE.

The object of this work is to present in outline form the law relating to Specific Performance, so as to facilitate the study of more compendious works. The bulk of the work consists of notes taken from Sir Edward Fry's well-known treatise; since the notes were taken for their original purpose, I have slightly re-arranged them, and have endeavoured to incorporate the gist of the more important recent cases.

H. S. B.

4, STONE BUILDINGS, LINCOLN'S INN.
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OUTLINES

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CHAPTER I.

ORIGIN, CHARACTER AND EXTENT OF THE JURISDICTION.

Definition.—The specific performance of a contract is its actual execution according to its stipulation and terms, as contrasted with damages or compensation for its non-execution. (Fry, p. 2.)

Such execution may be enforced by ordering the party in default to do the very act he contracted to do, and in the event of his disobedience punishing him for contempt. In some cases the Court may vest property in a purchaser by a vesting order under the Trustee Act, 1850 (13 & 14 Vict. c. 60, s. 30).

The Common Law.—The Courts of Common Law on default of performance of a contract did not enforce it specifically, but only gave damages; but a near approach to specific performance may be found in the prerogative writ of mandamus for the enforcement of public duties. By the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97, s. 2), in actions for breach of contract to deliver
specific goods, they were empowered to order the very goods themselves to be delivered over to the plaintiff.

Courts of Equity.—On the other hand, Courts of Equity have for some centuries enforced specific performance, and their jurisdiction has been traced back to the reign of Richard II., and from the Year-Book in 8 Ed. IV. it would seem that it was fully recognised. Its original source was probably the Canon Law. Although by virtue of the Judicature Acts each division of the High Court is now both a court of law and equity, yet sec. 34 of the 1873 Act specially assigns "the specific performance of contracts between vendors and purchasers of real estate (including contracts for leases)" to the Chancery Division. The Chancery Division is therefore the appropriate division for initiating proceedings for the specific performance of contracts relating to land. It should, however, be noticed that if A. sued B. for damages in the Queen's Bench Division and B. counterclaimed to have a contract to sell land specifically enforced, the judge might if he chose retain the action, and would have all the jurisdiction of a Chancery judge (Story v. Waddle, 4 Q. B. D. 289); though in such a case the action is generally transferred on the defendant's application, even against the plaintiff's wish, to the Chancery Division (Hillman v. Mayhew, 1 Ex. D. 132). The last cited case was one for the recovery of land, and the defendant set up a counter-claim for specific performance of a contract for a lease.

County Courts have also jurisdiction in cases of sales and leases of property when the purchase money or value of the premises does not exceed £500 (County Courts Acts, 1865–1867, secs. 1 and 9).