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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 7th December 1875, and was referred to a Select Committee with instructions to make their report thereon in three months :—

Bill No. 13 of 1875.
THE SPECIFIC RELIEF BILL,
1876.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Repeal of enactments.
3. Interpretation-clause.
4. English law how far inapplicable.
5. Specific relief how given.
6. Preventive relief.
7. Purposes for which relief cannot be given.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

- (a). *Possession of Immoveable Property.*
8. Recovery of specific immoveable property.
9. Suit by person dispossessed of immoveable property.

VI.—72 a

(b). *Possession of Moveable Property.*

SECTIONS.

10. Recovery of specific moveable property.
11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF AGREEMENTS.

(a). *Agreements which may be specifically enforced.*

12. Cases in which specific performance enforceable.
13. Mutual rights of parties.
14. Specific performance of part of an agreement where the part unperformed is small.
15. Specific performance of part of an agreement where the part unperformed is large.
16. Bar in other cases of specific performance of part of agreement.
17. Purchaser's rights against vendor with imperfect title.
18. Power to award compensation in certain cases.
19. Liquidation of damages not a bar to specific performance.

(b). *Agreement which cannot be specifically enforced.*

20. Agreements not specifically enforceable.

(c). *Of the Discretion of the Court.*

21. Discretion as to decreeing specific performance.

(d). *For whom Agreements may be specifically enforced.*

22. Who may obtain specific performance.

(e). *For whom Agreements cannot be specifically enforced.*

23. Agreement to sell property by one who has no title or who is a voluntary settlor.
24. Personal bars to the relief.

(f). *For whom Agreements cannot be specifically enforced, except with a variation.*

SECTIONS.

25. Non-enforcement except with variation.
- (g). *Against whom Agreements may be specifically enforced.*
26. Relief against parties and persons claiming under them by subsequent title.
- (h). *Against whom Agreements cannot be specifically enforced.*
27. What parties cannot be compelled to perform.
- (i). *The effect of dismissing a suit for specific performance.*
28. Bar of suit for breach after dismissal.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

29. When instrument may be rectified.
30. Presumption as to intent of parties.
31. Principles of rectification.
32. Specific enforcement of rectified contract.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

33. When rescission may be adjudged.
34. Rescission for mistake.
35. Alternative prayer for rescission in suit for specific performance.
36. Court may require party rescinding to do equity.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

37. When cancellation may be ordered.
38. What instruments may be partially cancelled.
39. Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.

OF DECLARATORY DECREES.

40. Discretion of Court as to declarations of status, or right.
Bar to such declaration.
41. Effect of declaration.

CHAPTER VII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

42. Power to order public servants and others to do certain specific acts.
Exemptions from such power.
43. Application how made.
Procedure thereon.
Order in alternative.
44. Peremptory order.
45. Execution of, and appeal from, orders.
46. Costs.
47. Bar to issue of *mandamus*.
48. Power to frame rules.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER VIII.

OF INJUNCTIONS GENERALLY.

SECTIONS.

49. Preventive relief how granted.
50. Temporary injunctions.
Perpetual injunctions.

CHAPTER IX.

OF PERPETUAL INJUNCTIONS.

51. Perpetual injunctions when granted.
52. Mandatory injunctions.
53. Injunction when refused.
54. Injunctions to perform negative agreement.

SCHEDULE.—Enactments repealed.

A Bill to define and amend the Law relating to certain kinds of specific Relief.

WHEREAS it is expedient to define and amend
Preamble. the law relating to certain
kinds of specific relief
obtainable in civil suits; It is hereby enacted as
follows :—

PART I.

PRELIMINARY.

1. This Act may be called "The Specific Relief
Short title. Act, 1876."

It extends to the whole of British India, except
the Scheduled Districts
as defined in Act No. XIV.
Local extent. of 1874;

And it shall come into force three months after
Commencement. the passing thereof.

2. The enactments specified in the schedule
hereto annexed are re-
pealed to the extent men-
tioned in its third column.
Repeal of enactments.

3. In this Act, unless there be something
repugnant in the subject
or context,—
Interpretation-clause.

'discretion' means a sound and reasonable dis-
'discretion.' cretion, exercised accord-
ing to the rules for the
time being in force in the Courts of Civil Judica-
ture :

'obligation' includes every duty, the breach of
'obligation.' which is punishable by
law :

'agreement' includes also an award and an obligation constructively created by operation of law :

'trust' includes every species of express, implied, or constructive fiduciary ownership :

'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character :

Illustrations.

(a). Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.' A is a trustee within the meaning of this Act for B to the extent of the annuity.

(b). A is the legal, medical, or spiritual adviser of B. A gains some pecuniary advantage by availing himself of his situation as such adviser. A is a trustee within the meaning of this Act of such advantage.

(c). A, being B's banker, discloses for his own purposes the state of B's account. A is a trustee within the meaning of this Act of the benefit gained by him by means of such disclosure.

(d). A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease.

(e). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee within the meaning of this Act of the profit so made.

(f). A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this Act of the land so bought.

(g). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act to the extent of that interest.

'settlement' means any instrument (other than a will or codicil) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

4. Except so far as they are embodied in this Act, the provisions of the English law how far applicable. law of England shall not be applicable to the kinds of relief hereinafter mentioned.

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which, according to the general law applicable to contracts, is not a valid contract : or

(b) to deprive any person of any right to relief other than specific performance which, according to the same law, he may have under any contract.

Specific relief how given. 5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant ;

(b) by ordering a party to do the very act which he is under an obligation to do ;

(c) by prohibiting a party from doing that which he is under an obligation not to do ; or

(d) by declaring and determining the rights of parties otherwise than by an award of compensation.

6. Relief granted under clause (c) of section Preventive relief. five is called preventive relief.

7. Specific or preventive relief cannot be granted for the mere purpose of enforcing a penal law. Purposes for which relief cannot be given.

PART II

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a).—Possession of Immoveable Property.

8. A person entitled to specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Nothing in this section applies to immoveable property claimed to belong to the Crown.

(b).—Possession of Moveable Property.

10. A person entitled to the immediate possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which another is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a). A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title deeds. B may recover them from C.

(b). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e). A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss.

Illustrations.

(a). A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

(b). A, a colliery-owner, keeps for the purpose of his business fifty coal-wagons. A sells B 50,000 tons of coal and lets to him the wagons to convey the coal. B, without A's authority, pledges the wagons to C, who threatens to sell them immediately. C may be compelled to deliver the wagons to A, for they are necessary for conducting his business, and their loss would cause him an injury for which money would not be an adequate compensation.

(c). A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF AGREEMENTS.

(a). *Agreements which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any agreement may in the discretion of the Court be enforced—

Cases in which specific performance enforceable.

(a) when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance :

(b) when the act agreed to be done is in the performance, wholly or partly, of a trust :

(c) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done : or

(d) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief :

(e) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is shown, it is to be presumed that the breach of an agreement to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of an agreement to transfer moveable property can be thus relieved.

Illustrations.

(a). A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

(b). A sells 500 tons of iron stacked on his wharf to B, in consideration of a bill accepted by C, and undertakes in writing to deliver the iron to bearer, he (A) 'having been paid for the same.' B mortgages the iron to D. The bill is dishonoured. A refuses to deliver the iron. A holds the iron as a trustee for D, and D may compel him specifically to perform his agreement.

(c). A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. The articles are of too special a character to bear an ascertainable market-value. A may compel B specifically to perform this agreement, for it would be extremely difficult to ascertain the actual damage caused by its non-performance.

(d). A transfers without endorsement, but for valuable consideration, a note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

(e). A, B and C agree to enter into partnership for a definite term under the style of A & Co. A refuses to carry out the agreement. B and C may compel A to join them in executing a proper partnership-deed, for the interest of B and C in the performance of the agreement cannot be adequately compensated for by money.

(f). A agrees with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

(g). In consideration of being released from certain obligations imposed on it by its Act of incorporation, a railway company agree with Z to make and maintain an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct and maintain a siding and a wharf as specified in the agreement. Z is entitled to have this agreement specifically enforced,

for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

(h). A agrees to sell, and B agrees to buy, a certain number of railway-shares of a particular description. A refuses to complete the purchase. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

(i). A agrees with B to paint a picture for B, who agrees to pay therefor rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the rupees 1,000.

(j). A advances rupees 10,000 to B, and B agrees to execute a mortgage of certain houses 'with an immediate power of sale' to secure the repayment of the advance. A requires B either to pay off the advance at once or to execute the mortgage. B refuses. A is entitled to have the agreement specifically performed.

13. When either of the parties to an agreement is entitled to a specific performance thereof according to the provisions of section twelve, the other party is also entitled to it, though not within those provisions.

Illustration.

A agrees to sell, and B agrees to buy, a patent for 10,000 rupees. B declines to complete the purchase. Here, though pecuniary compensation for its non-performance might afford A adequate relief, A may enforce the agreement specifically, for, if he had declined to complete it, B would have been entitled to a specific performance thereof.

14. Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency.

Illustrations.

(a). A agrees to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, and the loss of them may be made good in money. A may be directed at the suit of B to convey to B the 98 bighás and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b). In a contract for the sale and purchase of a house and lands for two lákhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party.

Illustrations.

(a). A agrees to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b). A agrees to sell to B an estate with a house and garden for 1,00,000 rupees. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

16. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the specific performance of a part of an agreement.

17. Where a person agrees to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor has subsequently acquired any interest in the property, the purchaser or lessee may compel him to make good the agreement out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the agreement, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to the costs of the suit, and to a lien for such deposit, interest and costs on the property agreed to be sold or let.

18. Any person suing for the specific performance of an agreement, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the agreement has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations.

(a). A, a purchaser, sues B, his vendor, for specific performance of an agreement for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the agreement.

(b). A agrees with B to sell him a house for Rs. 1,000 the price to be paid and the possession given on the 1st January 1876. A fails to perform his part of the agreement, and B brings his suit for specific performance, which is decided in his favour on the 1st January 1877. The decree may, besides ordering specific performance, award to B compensation for any loss or damage which he has sustained by A's refusal.

(c). A sues for the specific performance of a resolution passed by the directors of a public company under which he was entitled to have a certain number of shares allotted to him. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

(d). A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the agreement or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

19. An agreement, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in the agreement as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A agrees to grant B an underlease of property held by A under C, and covenants that if C refuses to grant a license necessary for that purpose, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the agreement specifically enforced.

(b). Agreements which cannot be specifically enforced.

Agreements not specifically enforceable.

20. The following agreements cannot be specifically enforced:—

- (a) an agreement for the breach of which compensation could not be recovered;
- (b) an agreement for the non-performance of which compensation in money is an adequate relief, and which does not come within section twelve, clause (a);
- (c) an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms;
- (d) an agreement which is in its nature revocable;
- (e) an agreement entered into by trustees either in excess of their powers or in breach of their trust;
- (f) an agreement entered into by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;
- (g) an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date;
- (h) an agreement to submit a controversy to arbitration.

Illustrations.

To (a).—A agrees in consideration of Rs. 500 to obtain an office under the Crown for B. This agreement cannot be specifically enforced.

A, a banker holding bills as a security for advances to B, takes a guarantee from B's brother, C, that the loss to the bank should not exceed Rs. 20,000. This transaction took place after B had commenced proceedings for the liquidation of his affairs and unknown to his other creditors with a view to prevent A from opposing a composition. The guarantee cannot be specifically enforced, as the transaction would have the effect of giving A an undue advantage over B's other creditors.

A, a military pensioner of Government, in consideration of Rs. 500, agrees to assign to B all future payments in respect of his pension. This agreement cannot be specifically enforced.

A husband and wife, professing the Christian religion, enter into an agreement providing for their future separation. This agreement cannot be specifically enforced.

A agrees to grant B a lease of a certain house. The length of the term to be granted is not stated, nor the date at which it is to commence. This agreement cannot be specifically enforced.

A agrees with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." This agreement cannot be specifically enforced.

Z, a resident in Calcutta, agrees, as trustee for B, a resident in Australia, to sell to C an annuity to which B is entitled for his life. The day before the date of the agreement B had died. Z cannot enforce this agreement.

A, the lessee of a house much out of repair, agrees to sell the lease to B. Before the sale, A receives from his landlord a notice of re-entry in default of the premises being repaired. A does not communicate this notice to B, who enters and is ejected in consequence of the non-repair. A cannot enforce the agreement against B.

A, the owner of a patent, agrees to sell it to B. B institutes a suit to compel specific performance of this agreement. Before the suit is heard, the patent expires. Specific performance of the agreement cannot be compelled.

On A's marriage with B, A's father, C, agrees with B's father, D, to settle certain lands on A and his children by B. D sues C to enforce specific performance of this agreement. C proves that the agreement was conditional on D settling a lakh of rupees on A and his children by B, and that D had not settled such lakh accordingly. The suit must be dismissed.

A, an author, agrees with B, a publisher, to complete a literary work, and dies before doing so. The agreement requiring A's personal skill and taste is discharged by his death, and B cannot enforce its performance as against A's representative.

A, a shoemaker, agrees with B to receive B's son as an apprentice for a term of years and teach him shoemaking. A dies before the expiration of the term. B cannot enforce performance of the agreement.

A and B enter into an agreement to become partners for a term and afterwards agree to rescind it.

A agrees to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed.

A agrees to buy certain houses in Calcutta, and before the completion of the agreement becomes insolvent. A's assignee, in exercise of his option under the Indian Insolvent Act, abandons the agreement.

In none of these cases can the agreement be specifically enforced.

To (b).—A agrees to sell, and B agrees to buy, a lakh of rupees in the four per cent. loan of the Government of India.

A agrees to sell, and B agrees to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B agrees to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

These agreements cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

To (c).—A agrees to render personal service to B. A agrees to employ B on personal service.

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

These agreements cannot be specifically performed.

A lets land to B, and B agrees to cultivate it in a particular manner for three years next after the date of the lease. A is not entitled to have this agreement specifically performed.

A and B agree that in consideration of annual advances to be made by A, B will for three years next after the date of the agreement grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery. A is not entitled to have this agreement specifically performed.

A agrees with B that in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B.

A agrees with B to execute certain works which the Court cannot superintend.

A agrees to supply B with all the goods of a certain class which B may require.

These agreements cannot be specifically enforced.

To (d).—A and B agree to become partners in a certain business, the agreement not specifying the duration of the proposed partnership. This agreement cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To (e).—A is a trustee of land with power to lease it for seven years. He enters into an agreement with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This agreement cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, agree to sell it to C for Rs. 30,000. The agreement is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines agree that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To (f).—A railway company contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To (g).—A agrees to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

(c). Of the Discretion of the Court.

21. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where, though it is clear that an agreement has been made and broken, the Court cannot find, with reasonable certainty, what are the terms of the agreement of which specific performance is sought.

Illustration.

(a). A, the owner of a refreshment-room, agrees with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his agreement. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

II. Where the circumstances under which the agreement is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(b). A tenant for life of certain property assigns his interest therein to B. C agrees to buy, and B agrees to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is completed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance. If B knew the fact and C did not, specific performance should be refused to B.

(c). A agrees to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the agreement should be refused to A.

(d). A agrees to sell, and B agrees to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A industriously conceals it from him. Specific performance should be refused to B.

(e). A's property is put up to auction in one lot. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance should be refused to B.

(f). A contracts with B who at the time is intoxicated. Specific performance should be refused to A.

III. Where the performance of the agreement would involve some hardship on the defendant which he did not foresee, whereas no such hardship would fall on the plaintiff if the agreement was not performed.

Illustrations.

(g). A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, agrees, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the agreement would operate so harshly on A, that the Court will not compel to specific performance in favour of C.

(h). A and B, trustees, join their beneficiary, C, in an agreement to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase money is not nearly enough to discharge those incumbrances, though, at the date of the agreement, the vendors believed it to be sufficient. Specific performance of the agreement should be refused to D.

(i). A, the owner of an estate, agrees to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the agreement should be refused to B unless he waives his claim to the unknown property.

(j). A agrees with B to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the agreement relating to the road should be refused to B, though he may be entitled to specific performance of the rest with compensation for loss of the road.

(k). A, a lessee of mines, agrees with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance should be refused to B.

(l). A agrees to buy certain land from B. The agreement is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(m). A agrees with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the agreement should be refused to B.

IV. The circumstance that the plaintiff has done substantial acts or suffered losses in consequence of an agreement susceptible of specific performance is one which the Court may reasonably consider in exercising its discretion to grant specific performance of such agreement.

Illustration.

A sells land to a railway company who agree to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the agreement to execute the works should be awarded in favour of A.

(d.) *For whom Agreements may be specifically enforced.*

22. Except as otherwise provided by this chapter, the specific performance of an agreement may be obtained by—

(a) any party thereto :

(b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the agreement, or where the agreement provides that his interest shall not be assigned, his representative in interest or principal shall not be entitled to specific performance of the agreement :

(c) where the agreement is a settlement on marriage, any person beneficially entitled thereunder :

(d) where the agreement has been entered into by a tenant for life in due exercise of a power, the remainderman :

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant :

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach :

(g) when a public company has entered into an agreement and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation :

(h) when the promoters of a public company have, before its incorporation, entered into an agreement for the purposes of the company, and such agreement is warranted by the terms of the incorporation, the company.

(e). *For whom Agreements cannot be specifically enforced.*

23. An agreement for the sale or letting of property by one who has no title or who is a voluntary settlor. property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has agreed to sell or let the same ;

(b) who, though he entered into the agreement believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting give the purchaser or lessee a title free from reasonable doubt ;

(c) who, previous to entering into the agreement, has made a voluntary settlement of the subject-matter thereof.

Illustrations.

(a). A agrees to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this agreement, even though C is willing to confirm it.

(b). A bequeaths his land to trustees, declaring that they should not sell it without the consent in writing of his sons and daughters. A dies. Then one of his daughters dies. The trustees then enter into an agreement with B to sell him the land. B refuses to carry out the agreement. The trustees cannot specifically enforce this agreement, as the title which they can give B is not free from reasonable doubt.

(c). A makes a voluntary settlement of certain property on his brothers and their issue, and afterwards enters into an agreement to sell the property to a stranger. A cannot enforce specific performance of this agreement so as to override the settlement and thus prejudice the interests of the persons claiming under it.

Personal bars to the relief.

24. Specific performance of an agreement cannot be enforced in favour of a party—

(a) who could not recover compensation for its breach ;

(b) who has become incapable of performing, or violates, any essential term of the agreement that on his part remains to be performed ; or

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract.

(d) who, previously to entering into the agreement, had notice that a voluntary settlement of the subject-matter thereof had been made and was then in force.

Illustrations.

(a). A agrees to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the agreement. Neither can B, although he might recover compensation from A's assignee for breach of the agreement.

(b). A agrees to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the agreement.

(c). A, holding land under an agreement with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce the agreement.

(d). A agrees to let, and B agrees to take, an unfinished house, B agreeing to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner : he cannot enforce the agreement, though A and B may sue each other for compensation for breach of the agreement.

(e). A agrees to let, and B agrees to take, a house for a specified term at a specified rent. B refuses to perform the agreement. A thereupon sues for and obtains compensation for the breach of contract. A cannot obtain specific performance of the agreement.

(f). *For whom Agreements cannot be specifically enforced except with a variation.*

25. Where a plaintiff seeks specific performance of an agreement in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases (namely) :—

(a) where by fraud or mistake of fact the agreement of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the agreement under a reasonable misapprehension as to its effect, as between himself and the plaintiff ;

(c) where the defendant, knowing the terms of the agreement and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff or upon some stipulation on the plaintiff's part, which goes to vary the agreement, but which he refuses to fulfil ;

(d) where the parties have varied the agreement subsequently to its execution.

Illustrations.

(a). A, B and C sign a writing, by which each agrees to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs.

1,000. A can obtain the performance sought only with the variation thus set up.

(b). A sues B to compel specific performance of an agreement in writing to buy a dwelling-house. B proves that he assumed that the agreement included an adjoining yard and the agreement was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the agreement, except with the variation set up by B.

(c). A agrees in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the agreement, B proposed orally that he should be at liberty to substitute for the strip mentioned in the agreement another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written agreement. A cannot obtain specific performance of the written agreement except with the variation set up by B.

(d). A agrees in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so with B's consent A pulls it down and erects a new house in its place: B agreeing orally to pay rent at Rs. 120 per mensem. B then sues to compel specific performance of the agreement in writing. He cannot enforce it except with the variations made by the subsequent oral agreement.

(g). *Against whom Agreements may be specifically enforced.*

26. Except as otherwise provided by this chapter, specific performance of an agreement under them by subsequent title may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the agreement, except a transferee for value, who has paid his money in good faith and without notice of the original agreement;

(c) any person claiming under a title which, though prior to the agreement, and known to the plaintiff, might have been displaced by the defendant;

(d) when a public company has entered into an agreement, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into an agreement, the company: provided that the company has ratified and adopted the agreement and the agreement is warranted by the terms of the incorporation.

Illustrations.

(a). A agrees to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the agreement specifically.

(b). A agrees to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original agreement. B may enforce specific performance of the agreement as against C.

(c). A agrees to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce the agreement against C.

(d). A agrees in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the agreement A dies intestate, and C takes out administration to his estate. B may enforce the agreement against C.

(e). A agrees to sell certain land to B. Before the completion of the agreement, A becomes a lunatic and C is appointed his committee. B may specifically enforce the agreement against C.

(f). A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, agrees to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the agreement against B.

(g). A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A agrees to sell his moiety to C and dies. C may enforce specific performance of the agreement against B.

(h). *Against whom Agreements cannot be specifically enforced.*

27. Specific performance of an agreement cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the agreement, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the agreement provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the agreement may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

(a). A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(b). A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i). *The Effect of dismissing a Suit for Specific Performance.*

28. The dismissal of a suit for specific performance of an agreement shall bar the plaintiff's right to sue for the breach of such agreement.

Bar of suit for breach after dismissal.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

29. When, through fraud or a mutual mistake of the parties, a contract When instrument may be rectified. or other instrument in writing does not truly express the intention of the parties, the Court, on finding it clearly proved—

(a) that there has been fraud or mistake in framing the instrument, and

(b) that the intention of the parties in executing the instrument was an alleged by the plaintiff,

may in its discretion rectify the instrument, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Illustrations.

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included.

Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud.

The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenanted with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

30. For the purpose of rectifying a contract in writing, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

31. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

32. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A agrees in writing to pay his attorney, B, a fixed sum in lieu of costs.

The agreement contains mistakes as to the name and rights of the client, which, if construed strictly, would have excluded B from all rights under the agreement. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

33. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court, in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

EXPLANATION.—In the case mentioned in clause (c) of this section, when the purchaser or lessor is in possession of the subject-matter, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him, together with the costs occasioned by the non-completion of the purchase or lease.

Illustration.

To (b).—A, an attorney, induces B, his client, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

34. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

35. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be enforced, it may be rescinded and delivered up to be cancelled.

36. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

37. Any person having reasonable apprehension that a written instrument, if left outstanding, may cause serious injury to a person against whom it is void or voidable, may sue to have it so adjudged, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

Illustrations.

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the

conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1875. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1874. B may obtain the cancellation of this lease.

(d). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 10,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

38. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand as regards A, B, D, and E.

39. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

40. Any person entitled to any legal character, or to any future right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

EXPLANATION.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Provided that no Court shall make any such declaration in any of the following cases:—

- where the right as to which the declaration is sought is contingent, or may never arise;
- where the plaintiff is in possession of the right which he seeks to have declared;
- where the right respecting which the declaration is sought could be enforced by ordinary suit.

EXPLANATION.—The presumptive right of a Hindú to property, if he survive the widow of a sonless Hindú, is not within clause (a) of the above proviso.

Illustrations.

(a). A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare

whether B, C and D took the property absolutely, or only for their lives, but it may not declare the interests of the children before their rights are vested.

(b). A covenants that if he should at any time be entitled to property exceeding one lách of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court cannot make the declaration.

(c). The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's life-time.

(d). A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(e). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. This alone is not enough to entitle A to a declaration of his right to hold the property.

(f). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life-time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

41. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence, such parties would be trustees.

Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

42. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, on application, make an order requiring any specific act to be done by any person holding a public office of a permanent nature, or by any corporation or inferior Court of Judicature: provided—

- that such act is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;
- that, in the opinion of the High Court, such act is consonant to right and justice;
- that the applicant has no other specific and adequate legal remedy; and
- that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize any High Court—

(e) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal; or

(f) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown.

43. Every application under section forty-two must be founded on an affidavit of the party injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, either make

Application how made. the order applied for absolute in the first instance, or refuse it and grant a rule to show cause why the order applied for should not be made.

If, in the latter case, the party complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do the act required, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

44. If the person to whom such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do the act absolutely.

45. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

46. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

47. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

48. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER VIII.

OF INJUNCTIONS GENERALLY.

49. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

50. Temporary injunctions are such as are to continue until a specified time. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER IX.

OF PERPETUAL INJUNCTIONS.

51. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether express or implied.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II of this Act.

When such obligation arises from an actual or threatened invasion by the defendant of the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

(a) where the parties have expressly agreed in writing that, in case of such invasion, a perpetual injunction may be granted:

(b) where there exists no standard for ascertaining the actual damage caused by the invasion:

(c) where the invasion is such that pecuniary compensation would not afford adequate relief:

(d) where it is probable that pecuniary compensation cannot be got for the invasion:

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings:

(f) where the obligation arises from a trust.

Illustrations.

(a.) A lets certain land to B, and B agrees not to dig sand or gravel thereout. A may obtain an injunction to restrain B from digging in violation of his agreement.

(b.) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may obtain an injunction to restrain them from doing so.

(c.) A lets certain arable lands to B for purposes of husbandry, but without any express agreement as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may obtain an injunction to restrain B from sowing the lands in contravention of his implied agreement to use them in a husbandlike manner.

(d.) A, B, and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, obtain an injunction to restrain A from doing the act.

(e.) A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may obtain an injunction to restrain her.

(f.) A, B, and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may obtain an injunction to restrain him.

(g.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may obtain an injunction to restrain further acts of trespass.

(h.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may obtain an injunction to restrain them.

(i.) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may obtain an injunction to restrain B.

(j.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may obtain an injunction to restrain him from so doing.

(k.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may obtain an injunction restraining A from making the noise.

(l.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may obtain an injunction to restrain the pollution.

(m.) A builds a house with eaves projecting over B's land. B may obtain an injunction to prevent A from so doing.

(n.) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(o.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(p.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(q.) In order to sell his goods, A uses marks, labels or descriptions so closely resembling those used by B as to be likely to deceive buyers into thinking that they are actually buying B's goods. B may obtain an injunction to restrain the user, provided his own use of the marks, labels or descriptions be an honest one.

(r.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

(s.) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, obtain an injunction to prevent the breach.

(t.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may obtain an injunction to restrain them.

(u.) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may obtain an injunction to restrain them.

(v.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(w.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may obtain an injunction to restrain A from so doing.

(x.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may obtain an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(y.) A makes a voluntary settlement of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may obtain an injunction to restrain the sale.

(z.) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may obtain an injunction to restrain A from so doing.

(aa.) A mortgages lands to B with the usual power of sale. C and D then recover judgments against A, B exercises the power and threatens to part with the surplus-moneys. As regards these, he is a trustee for A and those claiming under A. C and D may therefore obtain an injunction to restrain B from parting with the surplus.

(bb.) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may obtain an injunction to restrain him from so doing.

(cc.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and can obtain an injunction to restrain C from publishing them.

(dd.) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A can obtain an injunction to restrain B from disclosing the process as being a thing contrary to his duty.

52. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(a.) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b.) In the case put as illustration (bb) to section 51, the Court may also order all written communications made by B, as patient, to A, as physician, to be destroyed.

(c.) In the case put as illustration (cc) to section 51, the Court may also order A's letters to be destroyed.

(d.) In the cases put as illustrations (p), (q) and (r) to section 51, the Court may also order the copies produced by piracy, and the trademarks, labels and descriptions improperly used, by A to be destroyed.

Injunction when refused. 53. An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:

(b) to stay proceedings in a Court superior to that from which the injunction is sought:

(c) to restrain persons from applying to any legislative body:

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a foreign Government:

(e) to stay proceedings in any criminal matter:

(f) to prevent the breach of an agreement the performance of which would not be specifically enforced:

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance:

(h) to prevent a libel or other act, whether punishable by criminal law or not, which is not an invasion of the plaintiff's right to, or his enjoyment of, property, and is not inconsistent with any contract made by the defendant with the plaintiff, or with any special duty which the defendant owes to the plaintiff:

(i) to prevent a continuing breach in which the applicant has acquiesced:

(j) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust:

(k) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court:

(l) where the applicant has no personal interest in the matter.

Illustrations.

(a.) A being B's neighbour, and having no other relations with him, threatens to publish a statement concerning B which would be punishable under chapter XXI of the Indian Penal Code. The Court cannot grant an injunction to restrain the publication, even though it may be injurious to B's property.

(b.) A, being B's medical adviser, threatens to publish B's communications with him, showing that

B has led an immoral life: B may obtain an injunction to restrain the publication.

(c.) A applies for an injunction to restrain B from working mines under A's land. It appears that B has been working them with A's permission for eight years. The injunction should be refused.

(d.) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(e.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

54. Notwithstanding section fifty-three, clause

(f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement expressed or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a.) A agrees to sell to B for rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A agrees to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied agreement, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A agrees with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the agreement to sing, but he is entitled to an injunction restraining A from singing at any other place of entertainment.

(d.) B agrees with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this agreement. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e.) A agrees with B that, in consideration of rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(See section 2.)

Number and year.	Subject.	Extent of repeal.
VIII of 1859	Code of Civil Procedure...	Secs. 15 and 192.
XIV of 159	Limitation Act ...	Sec. 15.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which is intended as a supplement to the Code of Civil Procedure, as revised and published in March 1875, is to define and amend the law relating to specific and preventive relief.

2. Under the head of specific relief, it deals with suits for—

- (a) the possession of specific property, moveable or immoveable,
- (b) the specific performance of agreements,
- (c) the rectification of instruments,
- (d) the rescission of contracts,
- (e) the cancellation of instruments,
- (f) declaratory decrees, and
- (g) the enforcement of public duties.

3. Under the head of preventive relief, it treats of perpetual injunctions.

4. The chapter relating to the recovery of possession of specific property embodies the English rules as to detinue, and the useful provision of the Indian Act, XIV of 1859, section 15, as to the right of persons informally dispossessed of land to recover possession by a summary suit. Words have been introduced to show expressly that this provision does not apply to lands claimed to belong to Government. This exemption in effect resulted from section 17 of Act XIV of 1859.

5. The matter of the chapter relating to specific performance is distributed under the following heads :—

- (a) Agreements which may be specifically enforced :
- (b) Agreements which cannot be specifically enforced :
- (c) For whom agreements may be specifically enforced :
- (d) Of the discretion of the court :
- (e) For whom agreements may not be specifically enforced :
- (f) For whom agreements may not be specifically enforced, except with a variation :
- (g) Against whom agreements may be specifically enforced :
- (h) Against whom agreements may not be specifically enforced :
- (i) The effect of dismissing a suit for specific performance.

It attempts to codify the English law on this subject with the following modifications :—

6. Subject to the negative rules afterwards set forth in this chapter, the Bill empowers the Courts to decree specific performance of any agreement when the parties have expressly agreed in writing that specific performance thereof may be required by either of them, or that damages shall not be considered adequate relief. This novel provision, taken from the New York Civil Code, is one of the means by which the Bill proposes to extend a useful jurisdiction, one, it may be remarked, peculiarly adapted to India, where the alternative remedy for a breach of contract, that, namely, of damages, is, owing to the poverty of the bulk of the population and the difficulty of executing money-decrees, often so utterly nugatory.

7. In England it has more than once been ruled that the Court of Chancery will not compel the performance of a continuous duty extending over many years. The Bill renders this doctrine more precise by declaring that an agreement, the performance of which necessarily involves the performance of continuous duties over a longer period than five years from its date, shall not be specifically enforced. Whether this is the best limit of time, will be a point for consideration before the Bill is passed.

8. With regard to specific performance of contracts to execute buildings or to cultivate lands, the Bill is intended to express the present law.

9. The rules as to when a contract for the sale of a married woman's estate will be specifically enforced are in England excessively complicated. The Bill makes no distinction in her case, and thus recognizes the principle embodied in the Indian Succession Act, section 4, and Act III of 1874.

10. In England a voluntary settlement of personal chattels is binding on the settlor and cannot be defeated by a subsequent sale. But it is otherwise in the case of freeholds, copyholds and leaseholds, and specific performance of a subsequent agreement to sell land may be enforced against the voluntary settlor and the parties claiming under the settlement, though not by the settlor. The Bill does not recognize this distinction (which is due to an artificial construction of 27 Eliz., c. 4), and treats land, in this respect, as if it were moveable property.

11. The absence in India of any enactments resembling the Statute of Frauds, sections 1, 3, 4 and 17, renders it unnecessary to embody in the Bill the intricate rules of the Court of Chancery as to when a parol agreement relating to land will, and when it will not, be specifically enforced.

12. It seems impossible to elicit a consistent doctrine from the English decisions as to the rights of a purchaser or lessee to specific performance with abatement or compensation when the title of the person agreeing to sell or lease is defective. The Bill lays down that only in *one* case can such relief be granted, namely, where the part of the agreement which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money. This will relieve the Courts from the exercise of a duty which, in many cases, must be more a matter of guesswork than of judicial discretion.

13. The right to enforce a contract specifically may, in England, be lost by delay in resorting to the Court, and a large mass of cases exists relating to this doctrine. The Bill contains no rules on the subject, for in India the provision of the Limitation Act (IX of 1871), schedule II, No. 113, that suits

for specific performance must be brought within three years from the day on which the plaintiff has notice that performance is refused, renders the doctrine of laches inapplicable to this kind of litigation. See 2 Mad. High Court Rep. 114, 270.

14. It seems to be erroneously supposed by some of the Mofussil Judges that, when a contract is proved, the grant of a decree for its specific performance is a matter of course. Care has been taken in this chapter to show distinctly that the grant of such decrees is purely within the sound discretion of the Court.

15. As in this country all remedies on an agreement can be granted by one and the same Court, it is conceived that only one suit should lie on account of its non-performance. It has on this account been provided in section 28 that if a suit for specific performance is dismissed, no other suit shall be brought on the same agreement.

16. Chapter III, as to the rectification of instruments, chapter IV, as to the rescission of contracts, and chapter V, as to the cancellation of instruments, require no special notice. They are taken, with a few verbal changes, from the New York Civil Code, and represent substantially the law on these subjects administered by English Courts of Equity.

17. Chapter VI, as to declaratory decrees, is intended to take the place of Act VIII of 1859, section 15, and differs from the English law on the subject principally in authorising the Court to make declarations of future rights, provided only that such rights are vested. In the absence of such a jurisdiction, it would seem to be necessary to authorise suits to perpetuate testimony, and there are obvious reasons why such suits should not be allowed in India.

18. Chapter VII deals with the subject of *mandamus*, and applies only to the Presidency High Courts. Care has been taken to exempt from orders under this chapter the Secretary of State in Council, the Government of India, and the Local Governments.

19. In Part III are contained some general rules as to when perpetual injunctions will, and when they will not, be granted. The chief modifications of the present law which the Bill proposes to make are as follows :—

20. By the Bill, the Courts are expressly given power to grant injunctions to do substantive acts, when such injunctions are necessary to prevent the breach of an obligation. In England, the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.

21. Under the Bill, an injunction to restrain a partner may be obtained without seeking a dissolution of the partnership, even when the partnership is determinable at will. In England the rule on this subject is still unsettled.

22. In England a married executrix will, as a rule, be restrained from getting in the assets if her husband be out of the jurisdiction, or a lunatic. The reason is that the husband, and he alone, is liable for a devastavit committed by his wife. The Indian Succession Act, sections 4 and 275, appears to relieve husbands of this liability, and the Bill accordingly contains no provision on the subject.

23. It is hardly necessary to observe that, in a country where law and equity are administered by the same Courts, the subject of staying legal proceedings need not be dealt with at much length. The provisions of the Bill relating to this matter are contained in section 56, clause (c), illustration (m), and in section 57, clauses (a) and (b), which relate to injunctions necessary to prevent a multiplicity of suits.

24. It may, in conclusion, be remarked that most of the many illustrations contained in the Bill are taken from the English Equity Reports.

SIMLA,
The 25th October 1875. }

(Signed) A. HOBHOUSE.

WHITLEY STOKES,
Secretary to the Government of India.