Chapter 6: Equity and Equity Practice

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In examining the decisions of our Supreme Judicial Court during the survey year, it will be found that most of the cases were decided upon fundamental principles earlier laid down by the Court. In certain cases, however, the Court was presented with the opportunity to clarify and point out the correct interpretation of previous decisions.

The equitable doctrine of specific performance has again been drawn into controversy. The "ghost of mutuality" has walked again. In an illuminating decision the Court once more examined the doctrines of "mutuality of obligation" and "mutuality of remedy" in the field of specific performance as they may exist in Massachusetts. It may be that this decision will put an end to the issue of mutuality in this field of law.

A statute was passed by the General Court in an attempt to clarify the law of the state in regard to specific performance of contracts concerning personal property.

There were also a number of decisions in equity to review the action of administrative agencies. These are discussed in Chapter 14, Administrative Law.

§6.1. Specific performance: The problems. The principles upon which the law of specific performance is grounded in this Commonwealth are more or less firmly fixed. In respect to land the principles, in the main, follow the decided weight of authority as found in most jurisdictions. The general rule is that contracts for the purchase and sale of real estate are specifically enforceable unless some special ground in the particular case warrants a denial of enforcement. In cases involving the purchase and sale of personal property, however, more difficulty arises. It will be found that relief in these cases has been greatly restricted. The recent restrictions have resulted in motivating a legislative enactment substantially affecting the remedy of
specific performance. Likewise, in the decisions, the Court would seem to have banished from Massachusetts forever the ghost of the doctrine of mutuality in specific performance cases. In the following sections more consideration will be given to these topics.

§6.2. Specific performance: Personal property, the cases, and a new statutory remedy. In this state the doctrine of specific performance in respect to contracts to deliver chattels or other personal property has been in large measure quite restricted in scope. The fact that such property may be acquired in the open market has led to the denial of relief. It has been deemed that an action for damages provides an adequate remedy. Thus, a contract for the sale of an automobile by the defendant was refused performance in Poltorak v. Jackson Chevrolet Co. Where specific performance has been decreed, it will be found that the chattel or personal property was unique or not readily obtainable in the open market. And a contract for the sale of shares of stock in a closely held corporation, limited in amount or not readily obtainable in the open market, may be enforced.

In Dahlstrom Metallic Door Co. v. Evatt Construction Co., the Court decreed specific performance of an agreement by a subcontractor to deliver certain materials needed in the construction of a building. It is to be noted, however, that the materials were already fabricated, were difficult to replace in the open market, and the lack of these materials was delaying completion of the construction contract.

And then, in the now quite famous Jackson Chevrolet case, cited above, the Court laid down the test of whether or not damages were the "equivalent of performance." The Court said: "The test to determine whether or not specific performance should be granted is the same in the case of contracts for the sale of personalty as in the case of contracts for the sale of real estate, namely whether damages for the breach are or are not the equivalent of the promised performance.

In view of these limitations placed on the remedy of specific performance, the General Court in 1954 enacted the following statute:

The fact that the plaintiff has a remedy at law for damages shall not bar a suit in equity for specific performance of a contract, other than one for purely personal services, if the court finds that no other existing remedy, or the damages recoverable thereby, is in fact the equivalent of the performance promised by the contract relied on by the plaintiff, and the court may order specific performance if it finds such remedy to be practicable. If performance is not decreed, damages may be determined in the proceeding, and

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3 Acts of 1954, c. 439, §1, inserting §1A in G.L. c. 214.

3 256 Mass. 404, 152 N.E. 715 (1926).
§6.3. Specific performance: Mutuality of obligation. The doctrine of mutuality was again raised in a recent case brought to compel specific performance of a contract to sell real and personal property. In *Morad v. Silva* 1 the parties entered into an agreement under seal for the sale of both real and personal property. In answer to the defendants’ contention that the plaintiff failed to furnish sufficient consideration for the defendants’ promise, the Court said that, the agreement being under seal, no further consideration was required.

The defendants further contended that specific performance should be denied because “there was no mutuality of obligation.” The Court in answer to this contention pointed out that mutuality of obligation is of importance only in determining whether a valid bilateral contract founded on good consideration has been entered into by the parties. 2 It has no bearing on the question as to whether specific performance shall or shall not be granted. In some of the earlier cases there exists an intimation that equity refuses specific performance where there is no mutuality of obligation. In the 1924 case of *Forman v. Gadouas*, 3 the Court in discussing the principles of specific performance stated:

> The general principle undoubtedly is that equity refuses specific performance of contracts where there is no mutuality of obligation. . . . But that principle is not applicable to contracts unenforceable against the plaintiff under the statute of frauds in suits for specific performance against a defendant who has bound himself by signing a memorandum sufficient under that statute.

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1 Acts of 1954, c. 439, §1, inserting §1A in G.L., c. 214.
7 247 Mass. 297, 142 N.E. 87.
bringing of suit by the plaintiff is proof of his assent to the agreement and establishes mutuality. There is thus a mutual contract, although the proof as to the defendant is expressed by signature to a writing, while that as to the plaintiff rests upon oral evidence and on the admissions of his bill.4

It is to be noted however, that what the Court really had in mind was the want of a mutuality of remedy.

It is true that some courts have laid down the principle that, in order for a party to be entitled to specific performance, there must be mutuality of remedy at the time the contract is made. This principle is no longer accepted by modern authorities.5 In the Morad case, the Court, stating the present law of this Commonwealth, said:

The modern rule is that “the fact that the remedy of specific enforcement is not available to one party is not sufficient reason for refusing it to the other party.” Restatement: Contracts, §372(1). The trend of our decisions is not at variance with this rule and we accept it as the law of this Commonwealth. [Cases cited.] We are mindful that there is language in a few of our decisions which tends to support the mutuality doctrine. [Cases cited.] To the extent that these can be considered authority for the doctrine we are not disposed to follow them.6

While it was said that specific performance is not a matter of right, the Court was cognizant of the fact that in some instances the remedy may involve difficulties and performance may be refused. Having this in mind the Court said that specific performance may be refused “if a substantial part of the agreed exchange for the performance to be compelled is as yet unperformed and its concurrent or future performance is not well secured to the satisfaction of the court.”7 The Court then asserted, “We have discussed the mutuality doctrine at considerable length because, despite the fact that most of our decisions are in harmony with the modern rule, the ghost of mutuality still walks and, until laid, will continue to haunt our law.”8

In the Morad case performance was decreed, requiring the plaintiff to perform all conditions of the agreement upon performance by the defendant.

§6.4. Dissolution of corporations. The dissolution of corporations, like their creation, is a matter of legislative cognizance. A corporation may be dissolved only in the manner set forth in the General Laws, Chapter 155, Section 50. In Rizzuto v. Onset Cafe, Inc.,1 the adminis-
trator of the estate of a stockholder filed a bill in equity to determine ownership of one share of stock and in addition prayed for the appointment of a receiver to distribute the assets of the corporation. In reversing the decree of the trial court, granting relief as to the distribution of the corporate assets, the Court said, "The general equity jurisdiction of courts does not extend to distributing the assets of a corporation merely because need for its continued existence is not apparent." The decree for the distribution of the assets was tantamount to a dissolution of the corporation and beyond the power of the court. It thus followed that the bill could not be maintained either for the distribution of the assets or the appointment of a receiver.

§6.5. Equity practice. While several of the recent cases involve questions of practice, they require no special comment in view of the fact that they followed the practice established in earlier decisions. One case, however, may call for some discussion as to when the court should exercise its discretion in allowing an amendment to a bill. In *McDade v. Moynihan* the Supreme Judicial Court, on appeal from a final decree, exercised its discretion and directed that an amendment denied in the trial court be allowed. The amendment was to the effect that since the commencement of the suit, the plaintiff had secured a judgment against the defendant in Pennsylvania for the amount claimed in the Massachusetts suit.

It appeared from the facts of the case that the parties executed an agreement in Pennsylvania whereby the defendants agreed to buy from the plaintiff all of the capital stock of a corporation together with certain so-called judgment notes of the corporation for an agreed price. The bill alleged that the defendants failed to pay certain installments of the purchase price. The bill further alleged that the defendants had broken another provision of the agreement whereby they warranted that the accumulated outstanding bills and expenses of the corporation should not be in excess of $2500.

The trial court denied a motion to amend the bill, as pointed out above. The Supreme Judicial Court reversed the trial court and allowed the amendment by what it termed "simple amendment." Under the older practice, it was necessary to make this amendment by a supplemental bill. The Court then ordered the entering of an interlocutory decree allowing the motion and the modification of the final decree to require the defendant to pay the unpaid balance of the Pennsylvania judgment with any unpaid interest thereon according to the law of Pennsylvania, instead of the sum named in the prior final decree.

The decision is clearly sound. The fact that after the suit in equity was instituted a cause of action included therein has been reduced to judgment in another state should not bar amendment. It is technically true that a cause of action based on a judgment is a different cause of action than that based on the original cause. In equity, however, the

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2 330 Mass. at 597, 116 N.E.2d at 250.

rule on amendments is broader than it may be at law. Under equity practice a cause of action asserted in the bill and later reduced to judgment may be the subject of an amendment; the final decree can then be entered to correspond to the existing facts and settle the entire controversy. The Supreme Judicial Court, having "on appeal" all of the powers of amendment of the court below, thus allowed the amendment and the modification of the final decree without the necessity of returning the case to the lower court.

2 G.L., c. 231, §125.