creek; and therefore nothing that would justify us in granting our writ of injunction. All that we can do is to see that the corporate franchises of the company are not interrupted longer than is absolutely necessary. Injunction refused.

RECENT ENGLISH DECISIONS.

Vice Chancellor Kindersley's Court—June, 1859.

FALCKE *vs.* GRAY.

This court will entertain a bill for the specific performance of an agreement to purchase a chattel; but, if the case made at the hearing shows that the price was inadequate, and the transaction upon the whole unfair, the bill will be dismissed; and that, although the court would not have given relief to a party had he sought, in the same case, to set the agreement aside.

This suit was instituted for the specific performance of a contract for the sale of two unique china jars, under the following circumstances:—Mrs. Gray, the defendant, wished to let her house, 119 Gloucester-terrace, Hyde-park, and put it into the hands of Messrs. Boyle & Bryden, house agents, for that purpose. Mr. Falcke, the plaintiff, saw the house and agreed to take it, having, at the same time, an option of purchasing certain articles of furniture, such as a dinner wagon, a table, some chairs, &c., and, amongst those articles, the two jars in question. The plaintiff, the defendant and a Mr. Brend, clerk to Messrs. Boyle & Bryden, met upon the premises and put a valuation on the articles, fixing that of the jars in the first instance at 25*l.*; but afterwards it was increased to 40*l.* Brend, however, admitted that he was really ignorant of the true value of the jars, upon which a reference as to the true value was agreed to be made to Messrs. Watson, dealers in articles of *virtu*, in Duke street, Manchester square. Plaintiff and Brend then drew up an agreement, to the effect that the plaintiff should have the option of purchasing the articles contained in a list appended to the agreement at the prices affixed. The two jars were in the list, and

marked 40*l.* That agreement was subsequently taken to, and signed by, Mrs. Gray. After signing that agreement Mrs. Gray went to the Messrs. Watson, who inspected the jars, and gave her a check for 200*l.* for them, and she allowed the Messrs. Watson to take them away. In her evidence she swore that she asked the Messrs. Watson whether she would be "acting like a lady" to sell the jars to them, and they replied that she would. They swore that they knew nothing of any sale, or contract for the sale, of the jars, previous to their own purchase of them; but that, after they had given Mrs. Gray the check, they asked her "who had expressed a wish to purchase the jars?" She said the plaintiff had; and they remarked that they knew him, as he was a dealer in the same line of business as themselves, and they believed he knew the real value of the jars as well as they did. Mrs. Gray, in her cross-examination, deposed that the Messrs. Watson knew of no sale of the jars prior to their own purchase of them from her. Upon this state of facts, the plaintiff filed a bill, and obtained an injunction (ex parte) against Mrs. Gray, and the Messrs. Watson as her agents, to restrain the sale of the jars. But the bill was afterwards amended, and it now came up on motion for a decree, seeking the specific performance by Mrs. Gray of her contract to sell the jars to the plaintiff for the 40*l.*

Bailey, Q. C., (*Waller* with him) for the plaintiff, cited *Haywood* vs. *Cope*, 5 Beav. 140.

Glasse, Q. C. (*Jones Bateman* with him) for Mrs. Gray, cited *Coles* vs. *Trecothick*, 9 Ves. 234; *Kimberley* vs. *Jennings*, 6 Sim. 340; *Fells* vs. *Read*, 3 Ves. 70; *Lowther* vs. *Lowther*, 13 Ves. 95; *Wood* vs. *Rowcliffe*, 2 Phill. 382; *Nutbrown* vs. *Thornton*, 10 Ves. 160; *Pooley* vs. *Budd*, 14 Beav. 34.

Greene, Q. C. (*Speed* with him) for Messrs. Watson, cited *Wedgwood* vs. *Adams*, 6 Beav. 600; *Day* vs. *Newman*, 2 Cox, 77; *Doloret* vs. *Rothschild*, 1 Sim. & St. 597; *Duncuft* vs. *Albrecht*, 1 Sim. 189; *Shaw* vs. *Fisher*, 2 DeG. & Sm. 11; *Wynne* vs. *Price*, 3 DeG. & Sm. 310; *Underwood* vs. *Hitchcox*, 1 Ves. Sr. 279; *Kien* vs. *Stukely*, 1 B. P. C. 191; *White* vs. *Damon*, 7 Ves. 30; *Harnett* vs. *Yielding*, 2 Sch. & Lef. 553; *Vaughan* vs.

Thomas, 1 B. C. C. 556; *Heathcote* vs. *Paignon*, 2 B. C. C. 167.

Bailey, Q. C., in reply.

The arguments and some minor details of the case sufficiently appear from the V. C.'s judgment.

The VICE-CHANCELLOR.—The defendant, Mrs. Gray, the occupier of a house in Gloucester-terrace, in January last was desirous of letting the house furnished. She employed Messrs. Boyle & Bryden, house agents, to procure her a tenant. The plaintiff, being in want of a house, went to look at that of Mrs. Gray, and observed the two jars. He had carried on the business of a dealer in curiosities and old china, and was well acquainted with the value of similar articles. He was struck with the jars, but did not immediately come to a conclusion as to them. Mrs. Gray was written to; she came to town, and the plaintiff went to the house and had an interview with her. Mr. Brend, the managing clerk of Messrs. Boyle & Bryden was there, and there was a discussion as to the terms on which the house was to be let. The terms were agreed upon, and it was arranged that the plaintiff should purchase certain articles of the furniture at a valuation. Some of the articles were ordinary furniture. Brend valued them, but said he did not know the value of the jars, and, at the suggestion of Mrs. Gray, named to her Messrs. Watson, of Duke street, as competent valuers. Some further discussion took place, and Mr. Brend at length, after first valuing the jars at 25*l.*, afterwards valued them at 40*l.* An agreement was then drawn up by Messrs. Boyle & Bryden, and signed by Mrs. Gray, to the effect that Mr. Falcke should have the option of purchasing the whole or any part of the undermentioned articles at the sums affixed, viz., sideboards 18*l.* 18*s.*, &c., &c., "and two large oriental china jars, in drawing-room, 40*l.*" These are the facts so far as they are now materially in controversy. And it also seemed not disputed that Mrs. Gray, feeling doubtful whether this paice was a fair price, sent to the defendants, Messrs. Watson, who at once offered her 200*l.* for them, and gave her a check for that amount, and carried the jars away. There was some difference in the evidence as to how far Messrs. Watson were aware of the previous contract; but the plaintiff now insists that he is entitled to

specific performance, and has filed his bill praying for it. The defendants insist, in the first place, that this bill cannot be maintained as being merely one to enforce the sale of a specific chattel. But as to that, what is the difference, in the eye of the court, between real and personal estate? There is really no difference; and a contract as to one is in no different position from a contract as to the other. I mean, assuming a proper case in both instances to be made out on which the court can act. If, however, such a case is not made out, the court refuses performance of any contract, whether relating to real or personal estate. As Lord Redesdale expresses it, in *Harnett* vs. *Yielding*, the difference between a court of equity and a court of law, in its method of treating the specific performance of an agreement is this: a court of law deals with a contract, and gives such a decree as it is competent to give in consequence of non-performance, viz., by giving a compensation in the shape of damages for the non-performance. But a court of equity says, that is not enough; and in many cases the mere remuneration and compensation in damages is not sufficient satisfaction. Apply that principle to chattels—and why is it less applicable to them than to real estate? In ordinary contracts, as for the purchase of ordinary articles of use and consumption, such as coals, corn or consols, this court will not decree specific performance. And why? Because you have only to go into the market and buy another equally good article, and so can get your compensation. It is not because it is a chattel, but because you can get adequate compensation for it. Now, here these articles are of unusual distinction and curiosity, if not unique; and it is altogether doubtful what price they will fetch. I am of opinion, therefore, that this is a contract which this court would enforce; and if the case stood alone upon that ground I would decree specific performance. But it does not do so. The next ground of defence is, that this was in fact a hard bargain, on the ground of the inadequacy of the price between the plaintiff and Mrs. Gray, and that if she still had the article the court would not enforce the agreement. The price was 40*l.*—now what was the value? These are articles of a very peculiar kind. Their value is not only fluctuating, but very capricious, depending on the whims

and wishes of a luxurious community. For any real use they might be capable of affording to the possessor, I should think 40*s.* would be a fair price; but their rarity gives them extreme value. The value of such things is known to the trade, and there are persons who deal in such articles. The plaintiff admits that they are worth 100*l.* to the trade, and as between persons not dealers, 125*l.* That is his estimate. But it is of no use to go into this question, because a dealer has actually given 200*l.* for them. Therefore the smallest price must be taken to be 200*l.* I by no means assume, however, that that is the whole value; and I cannot help thinking that Messrs. Watson mean to get a great deal more. But assuming the value to be 200*l.*, 40*l.* was one-fifth—two-fifths according to the plaintiff's view. That that was a hard bargain, so far as the price is concerned, nobody can question. But the plaintiff's counsel, admitting it to be a hard bargain, still contended that inadequacy of price was not a sufficient ground for the court to refuse specific performance, and this is, then, the question I have now to consider. The general rule as to hard bargains is, that the court will not decree specific performance in such cases, on the ground that after all, specific performance is a matter of discretion, and is to be used to advance justice, not to gratify caprice. Lord Eldon, in *White* vs. *Damon*, observed that this discretion must not be capriciously used, but only upon settled rules of justice and equity. Lord Langdale, in *Wedgwood* vs. *Adams*, considered that it must depend upon the circumstances of each case, and that the court only abstained from giving relief when damages would be awarded at law. I may observe, with respect to the cases in which the court has refused specific performance on the ground of its being a hard bargain, that in many of them in which the court has done so, there were no circumstances of impropriety on the part of the person seeking to enforce the contract. The cases are not very numerous where inadequacy of price alone has come into consideration. But I refer to those in which specific performance has been refused on the ground of inadequacy of price. Specific performance has been refused where there was evasion and superior knowledge, and also the keeping back of information, an element which, it must be

assumed, does not exist in this case. It was said, however, in the case to which I refer, that if the bill had been filed to set aside the contract, there would not have been sufficient ground for it. Lord Thurlow, in one case, went so far as to say, that if a man went to purchase an estate, and there was a valuable mine under it, of which the purchaser knew, but the vendor did not, the court would not set the contract aside; yet no one can doubt that the court would not enforce specific performance of such a purchase. There is a wide difference between the cases where the court is called upon to set aside an agreement, and those where it is called upon to enforce an agreement. I do not say that these are all the authorities on the simple question of inadequacy of price. The next case is peculiar: *Kien* vs. *Stukely*, where the H. of L. came to no decision. *Vaughan* vs. *Thomas*, also, shows the tendency of the court. In *Heathcote* vs. *Paignon*, the contract was set aside on the ground of inadequacy. The case of *Day* vs. *Newman* is decisive on the point. In *White* vs. *Damon*, the difference was because the sale was by auction. Now, these two cases appear conclusive; and even if the matter were *res integra*, and there were no authority to guide me but those principles which ought to guide every decision of a court of equity, it appears to me that I ought to refuse specific performance. For the interference of a court of equity is something which is exceptional; that is to say, not that it is not of daily occurrence, but it is discretionary, (though the discretion is not arbitrary, but according to ascertained rules) and is not to be exercised when, in the view of the court, it would do that which would be unreasonable and shocking to the feelings of mankind. If there were nothing more in the case than that Mr. Falcke bought of Mrs. Gray property worth 200*l.* for 40*l.*, I think I ought to say, "Bring your action, for I will not assist you." But it appears to me that in this case there are circumstances which render it clear that I ought to refuse specific performance. Was this transaction the case of a seller endeavoring to get the best price for his commodity, and a buyer endeavoring to give the smallest? The clear intention of Mrs. Gray was, that there should be put upon the articles what was a fair and reasonable price; and though she was told by Mr. Brend that he was not

a judge of these matters, still she asked his opinion, and he said, "Suppose we say 40*l.*" Mr. Falcke, to do him justice, does not appear to have pressed the matter; but still Mrs. Gray must be held to have considered that that was a fair and reasonable valuation. She could not positively tell. She says it was a legacy from a lady who was reported to have had an offer from George the Fourth, of 100*l.* for the jars. But what was Mr. Falcke's position? He says, he knew very well that it was not a reasonable price. And was this, then, what Mrs. Gray intended? [His honor then read part of the evidence, showing that Mr. Falcke knew the jars were worth 125*l.* at least, and that he did not interfere in the valuation.] Knowing all this, Mr. Falcke allows the contract to be signed on this footing; and the question is, whether he can come to the court and say, "Compel Mrs. Gray to perform this contract?" This court is not a court of honor, and is not to decide the case because one of the parties has not acted as a man of honor ought to act. I admit that these articles are of fluctuating value, yet still they have a market value. I admit that I could not set aside this contract; yet it appears to me that, consistently with justice, I ought to refuse to interfere to enforce the contract. In doing this I ought to dismiss this bill without costs as against Mrs. Gray. It was, indeed, contended that she ought not to have been a party, and that the bill ought to have been filed against the defendants, Messrs. Watson, alone. I think that, under the circumstances, the plaintiff was right in making Mrs. Gray a defendant; but that, as to Messrs. Watson, it was not proved that Messrs. Watson knew anything of the previous sale to Mr. Falcke, and that the plaintiff can have no relief against them. On the whole case, therefore, the bill must be dismissed without costs against Mrs. Gray, but with costs against Messrs. Watson.