the damages, but the objection is without merit and is hereby overruled. Decision of the District Court in the case of the cross-libel was also correct.

Decree of the Circuit Court

AFFIRMED WITH COSTS IN BOTH CASES.

PURCELL *v.* MINER.

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose, must bring himself within the same conditions, before he can invoke the aid of a court of equity.

That is to say, he must make full, satisfactory, and indubitable proof—

First. Of the contract, and of its terms; a proof which must show a contract leaving no *jus deliberandi*, or *locus pœnitentiæ;* and which cannot be made out by mere hearsay, or by evidence of the declarations of a party to mere strangers to the transaction, in chance conversation.

Secona. That the consideration has been paid or tendered. And even the payment of the price in part or in whole, will not, of itself, be sufficient for the interference of a court of equity, if the party have a sufficient remedy at law to recover back the money.

Third. That there has been such a part-performance of the contract that its rescission would be a fraud on the other party, and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract, and acquiesced in by the other party; a requisition which is not satisfied by proof of a scrambling and litigious possession.

PURCELL filed a bill against Coleman, Miner and wife, and others, in the Supreme Court of the District of Columbia, where the statute of frauds—enacting that all estates in lands made by parol only and not put in writing and signed by the parties making the same shall have the force and effect of estates at will only—is in force. The bill set forth that Coleman having a house in Washington, and he, Purcell, a farm in Virginia, "a trade" had been made between them; and the possession and key of the house delivered to him by Coleman, and full payment admitted by Coleman's

receiving the farm, the title of which he had examined, and "the trade" closed; and that Coleman had requested the complainant to prepare both deeds; that Purcell had done so, and had tendered and was now ready to tender to Coleman a deed for the farm according to the contract.

The bill then went on:

"Your orator further avers that several weeks thereafter, to his great surprise, about the time he had commenced improving the house for the purpose of placing a tenant in it, the said Coleman, in the night-time, entered the back way, by means of a ladder, and took from the back door the key on the inside of said house, and held forcible possession of the same until he was found guilty of the charge by two justices, after hearing all the testimony and having the aid of two counsel. That the said Coleman then delivered the key to your orator, and stated in the presence of several gentlemen that the change of property was fair; that he knew its condition before trading, in relation to its value and title; that it was advantageous to him, but that his wife had a few days previous refused to go with him to the said farm, and that was his only reason for his unlawful conduct, and that he would not do it again, and that he would pay all the costs in the case, which he has failed to do.

"Your orator further avers that notwithstanding the key, possession, and equitable title being with your orator, and that he had actually prepared a bill in equity to compel said Coleman to make him a deed for the house and lot, and was about to file it, that to his great surprise it appeared that on the 9th March, 1861, one Miner had entered into a conditional contract with the said Coleman for the house and lot, and obtained a deed for the same in the name of his wife; the said Miner well knowing at the time he made the conditional contract with the said Coleman that your orator was entitled to the equitable estate in said house and lot, as well as the peaceable and lawful possession of the same; that the said Miner, in order to get possession of the house, in the absence of your orator prepared a false key and entered it, first having torn down the printed advertisement from the door showing the house was for rent by your orator. And that your orator had again to incur the expense, loss of time, and annoyance of prosecuting the writ of

forcible entry, and the said Miner was found guilty as charged, and fined fifty dollars.

"Your orator further avers that the said Miner stated to your orator in the presence of several gentlemen that it was not necessary to make him a party to the suit to compel the legal title; that if your orator succeeded against said Coleman, that said Coleman was to convey back to him or his wife the land in Virginia, which he had conveyed to said Coleman for the house and lot referred to, thereby showing that their pretended exchange was entirely depending on the right of your orator to the said house and lot, which is still in your orator's possession, but owing to the annoyance, by said Coleman and Miner, he has been unable to rent it.

"Your orator further avers that it is impossible to place your orator and the said Coleman in the same situation they were in before they exchanged property, because the said Coleman not having given attention to the farm, a barn has been destroyed, and also much of the fencing, as your orator has been informed and believes, and that he has been at expense in repairing the house and lot, &c."

The bill prayed a specific performance of the contract set up.

The bill was answered by Miner, denying, &c., and set out that Miner also having a farm in Virginia, he and Coleman had agreed on and actually consummated a *bonâ fide* and unconditional exchange of the house for *it*.

The answer then thus went on:

"This defendant further says, that soon after the execution of said deed to his said wife he took possession of the premises (as this defendant was authorized to do as the property of his wife) in a peaceable, quiet, and proper manner, and that he met upon the street a locksmith, who unlocked the front door of said house and sold this defendant a key. Some days subsequently the said complainant demanded of this defendant the possession of said house and lot, which demand this defendant refused to comply with. The next day the complainant came to the premises with a large number of officers and two justices of the peace, and in their presence again demanded possession

of the house and lot, which this defendant again refused to grant, but being requested by said justices, he opened the door and allowed them to enter. The said justices immediately proceeded to try the question of possession, and, to the utter surprise and astonishment of this defendant, imposed a fine for withholding from the said complainant the possession of the said house and lot. This defendant requested the said complainant to show his title to the said house and lot which he claimed, and the said complainant exhibited some papers, but none of them were signed by said Coleman, nor were they of any consequence in reference to the support of his pretended claim of title. This defendant immediately called upon Coleman and related to him the circumstances in reference to the claim upon the house and lot set up by the complainant, and was informed by Coleman that the complainant had no claim upon the said house and lot, but admitted that they had been negotiating for an exchange of properties, and while the negotiations were going on, he, the said Coleman, learned that the farm in Virginia that said complainant had offered him for said house and lot did not belong to the said complainant, and that he could not give him, the said Coleman, a clear title thereto, and consequently that he, the said Coleman, had declined closing any contract with said complainant."

Mrs. Miner did not answer, but made default. A good deal of testimony was taken, many of the interrogatories—the parties managing their own case—being of a most leading character.

The court below dismissed the bill, and the case was now here on appeal.

Messrs. Brent and Merrick, for the appellant, Purcell:

At a moment when the complainant was entitled to a decree *pro confesso* against Mrs. Miner, the recipient of Coleman's title, the court dismissed the bill.

The statute of frauds is not relied on or intimated in the answer of defendants; but if it had been, it would not apply in this case. The giving possession is part performance.*

* Stewart *v.* Dent (N. & S.), 4th July, 1786; Simmons *v.* Hill, 4 Harris & McHenry, 252.

The possession being mutually given and taken by the parties, entitled the appellant to a specific performance of the agreement.* An exchange will be specifically decreed.†

Mr. Miner, pro se, contra.

Mr. Justice GRIER delivered the opinion of the court.

A contract for the exchange of lands is as much within the statute of frauds as a contract for their sale, and a party seeking to enforce a specific execution of a parol contract for that purpose, must bring himself within the same conditions before he can invoke the aid of a court of equity. The statute, which requires such contracts to be in writing, is equally binding on courts of equity as courts of law. Every day's experience more fully demonstrates that this statute was founded in wisdom, and absolutely necessary to preserve the title to real property from the chances, the uncertainty, and the fraud attending the admission of parol testimony. It has been often regretted by judges that courts of equity have not required as rigid an execution of the statute as courts of law.

Nevertheless, courts of equity have, in many instances, relaxed the rigid requirements of the statute; but it has always been done for the purposes of hindering the statute made to prevent frauds from becoming the instrument of fraud.

A mere breach of a parol promise will not make a case for the interference of a chancellor. It is plain that a party who claims such interference has the burden of proof thrown on him. He knows that the law requires written evidence of such contracts, in order to their validity. He has acted with great negligence and folly who has paid his money without getting his deed. When he requests a court to interfere for him, and save him from the consequences of his own disregard of the law, he should be held rigidly to full, satisfactory, and indubitable proof—

First. Of the contract, and of its terms. Such proof

* Boon *v.* Chiles, 10 Peters, 177. † McIver *v.* Kyger, 3 Wheaton, 53.

must be clear, definite, and conclusive, and must show a contract, leaving no *jus deliberandi*, or *locus pœnitentiæ*. It cannot be made out by mere hearsay, or evidence of the declarations of a party to mere strangers to the transaction, in chance conversation, which the witness had no reason to recollect from interest in the subject-matter, which may have been imperfectly heard, or inaccurately remembered, perverted, or altogether fabricated; testimony, therefore, impossible to be contradicted.

Second. That the consideration has been paid or tendered. But the mere payment of the price, in part or in whole, will not, of itself, be sufficient for the interference of a court of equity, the party having a sufficient remedy at law to recover back the money.

Third. Such a part performance of the contract that its rescission would be a fraud on the other party, and could not be fully compensated by recovery of damages in a court of law.

Fourth. That delivery of possession has been made in pursuance of the contract, and acquiesced in by the other party. This will not be satisfied by proof of a scrambling and litigious possession.

The application of these principles to the case before us will show that the plaintiff has wholly failed to establish a case proper for the interference of a court of equity.

We do not think it necessary to a vindication of our judgment to give a history either of the pleadings or evidence disclosed by the record. The case appears to have been carried on by the parties *propriâ personâ*, who are excusable for their ignorance of all the rules of pleading and practice in a court of chancery, or the proper mode of taking testimony. The merits of the case seem to have been tried in a verbal wrangle before two justices, and afterwards converted into a written one for the consideration of the court.

Taking the complainant's bill to be a correct statement of the facts, he has shown no case for the interference of the court. By his statement, the contract was not intended

Application of petitioner.

to be left in parol; but when the parties had each examined the properties proposed to be exchanged, they contemplated to come together and perfect the exchange. If either party had delivered a deed, in execution of the "trade" or bargain, and the other refused to fulfil his part, by making a proper conveyance, or if valuable improvements had been made by the party in possession, there would have been a case for a decree of specific execution. As it was, the defendant declined to go on with the "trade," alleging that the plaintiff's farm was incumbered. He had given the key of the house to the complainant, which was set up as a delivery of possession, while the defendant denied any intention to make such delivery, and took forcible possession of his house. While this contest about the possession was going on, the defendant sold his house, and conveyed it to the wife of his counsel, who carried on the litigation for him before the justices, and here.

The bill must fail—

1. For want of clear, definite, and conclusive proofs of the contract.

2. For want of any delivery of peaceful and uninterrupted possession.

3. Or of valuable improvements made.

We find no part execution on either side, nor anything but a breach of promise, and a consequent quarrel before the contract of exchange was executed.

DECREE AFFIRMED.

NOTE.

SAME v. SAME.

AFTER the decision above made, the complainant, Purcell, asked leave of this court to file a petition for a bill of review in the court below. He had already asked in that court, leave to file such a petition; but the leave was not granted.

The petition asked the leave on two grounds.

The first ground consisted in the material evidence which it

was said could be given by Purcell himself, he being rendered competent to testify in his own behalf since the final decree in March, 1864, by the act of Congress of 2d July, 1864, which, for the first time, enabled parties to testify in their own cases. And it being alleged that the new evidence which he would be able to give would establish,—

1st. The clear and definite terms of the contract of exchange.

2d. Part performance of the verbal contract, by each party taking possession of the exchanged property in execution of the contract, and by improvements made.

3d. The tender of a deed of conveyance from the petitioner to Coleman, and his refusal to accept it.

All which facts it was alleged were in the exclusive knowledge of the petitioner.

Besides this new evidence, the petition set forth newly discovered evidence by one Calvert, and others, tending to show distinct and unequivocal acts of possession, by Coleman, of the farm in Virginia, and his improvements thereon under, and in pursuance of the contract of exchange.

Messrs. Brent and Merrick, for the petitioner.

By the new evidence the right of complainant to specific performance would be made out.*

In addition there was error in law,—since the legal title had passed to Mrs. Miner,—in not decreeing against her, *pro confesso*, under the rules of this court adopted by the court below.

Mr. Justice GRIER delivered the opinion of the court.

We have just decided this case and affirmed the judgment below, because by the complainant's own statement in his bill he has shown no sufficient grounds for a court of equity to grant him the relief sought. We will not repeat the points there decided. The case was too plain to leave any possible doubt respecting the correctness of our decision. Moreover, the record showed an application made in the court below, before the appeal to this court, for a bill of review, which was decided by this court to have been properly refused. But it seems that the appellant is not satisfied with the judgment of the court, and

* Story's Eq. Plead., § 412–418; 3 Daniels' Ch. Prac., 1733, side paging.

now makes an application to the court for leave to file *another* bill of review in the court below.

We have no doubt that the complainant honestly believes that he has been greatly wronged by the defendant below, who has taken the liberty of breaking his promise with regard to a parol contract for an exchange of property with the complainant; but we had supposed that in the opinion just delivered, we had shown clearly to the satisfaction of any person who did not suffer under some obliquity of mental vision, that by his own statement of his case, the complainant had mistaken his remedy; and that although he may have suffered a wrong by the defendant's want of good faith, he had not presented a case which required a court of equity to disregard the statute of frauds, because it had been used for the purpose of committing a fraud. As if a party to a contract of exchange had received a deed and kept the land; refusing to give a conveyance for the land given in exchange.

But in this case there was nothing shown but a breach of promise and a scrambling possession, followed by litigation. The present application shows more perseverance and faith in the applicant than discretion or judgment; and presents not a single feature of a case proper for a bill of review.

By Lord Chancellor Bacon's rules, it was declared: "No bill of review shall be admitted except it contain either error in law appearing in the body of the decree without further examination of matters in fact, or some new matter which hath arisen in time after the decree; and not on any new proof which might have been used when the decree was made. Nevertheless, upon new proof that is come to light after the decree was made, which could not possibly have been used at the time when the decree passed, a bill of review may be granted by the special license of the court and not otherwise."

We will not put ourselves in the position of seriously noticing the reasons offered for a review of this case. Suffice it to say that the petitioner has not presented a single feature of a case within the rules. He offers no new evidence, but what he might as well have produced before, and which, if it had been produced, would not have justified a decree in his favor.

MOTION DENIED.