

WILLIAM PHILPOTT }
 vs. }
 IRWIN ELLIOTT. } DECEMBER TERM, 1851.

[SPECIFIC PERFORMANCE—POWER TO CORRECT ERROR IN WRITTEN AGREEMENTS.]

It is competent for a party in a court of equity to offer parol evidence of a mistake in a written agreement relating to lands, have it rectified and then specifically executed as rectified.

But before the agreement will be reformed and executed as reformed, the mistake, and the proposed correction, must both be made out in the clearest and most unequivocal manner.

Specific execution of contracts in equity is not a matter of absolute right but of sound discretion in the court, and unless the court is satisfied, the application is fair, just, and reasonable in every respect, it will abstain from interfering.

[The bill in this case was filed on the 23d of June, 1850, in the equity side of Baltimore County Court, from which it was removed to the Court of Chancery. The facts of the case are sufficiently stated in the Chancellor's opinion.]

THE CHANCELLOR :

Whatever doubts may have been entertained as to the state of the law prior to the case of *Moale vs. Buchanan et al*, 11 *G. & J.*, 314, there certainly can be no doubt now that it is competent to a party in a court of equity to offer parol evidence of a mistake in an agreement in writing relating to lands, to have it rectified, and then specifically executed as rectified.

Cases establishing a contrary doctrine may readily be found, but these were repudiated by Chancellor Kent, who permitted the parol proof to be offered establishing the mistake, reformed the agreement according to the proof and specifically executed it as reformed, and the principle thus settled, was approved and affirmed by the Court of Appeals in the case referred to.

The bill in this case asks for the application of this principle. It alleges, that on the 19th of September, 1849, a lease was executed by the defendant to the plaintiff, of a lot of ground in the city of Baltimore, upon the terms therein mentioned, in