

1854.
 Fuller
 v.
 Richmond.

I have already expressed my views respecting the powers of the court in regard to matters of this description in the case of *Stevenson v. Clarke* (a).

A suit for the specific delivery of a chattel and for the specific performance of an agreement relating to chattels, seems to me to be different things and to depend upon different principles, although nearly akin to each other. The right to specific delivery of chattels rests wholly upon property, combined either with peculiar value in the subject or fiduciary relation between the parties, and it exists or may exist independently of contract altogether. The right to specific performance, of course, necessarily presupposes contract; and when it concerns a chattel, rests upon peculiar value in the subject matter of the contract. To this latter right property is not essential, except so far as the equitable maxims "that what is agreed to be done is to be considered done," and "that the vendor is a trustee for the purchaser," may extend to create property in the eye of this court. It is no objection, therefore, to a suit of this sort, that the property in the subject has not passed; that something remains to be done by the seller; that there has been no delivery, and the like,—which are valid objections enough at law generally, in similar cases. All that the purchaser has to shew is, that he has entered into a contract; that the subject possesses peculiar value; that it is capable of being identified; and that his conduct has been such as not to disentitle him to the aid of this court. The right to specific performance then arises, and this vests an equitable and qualified property in the purchaser, but it is not necessary that the property should pass at law. It seems to me, too, that all the consequences of applying this principal must necessarily follow: thus, if the article which is the subject of the contract be des-

Judgment.

(a) Ante 540.

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