

Although a contract which purports to transfer property which is not in existence, does not, in equity, operate as an immediate alienation; still if a vendor or mortgagor agrees to sell or mortgage specific property of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, a Court of equity will, in this case, compel him to perform his contract; and the contract will, in equity, transfer the beneficial interest to the mortgagee or purchaser, immediately on the property being acquired: *Re Thirkell, Perrin v. Wood* (1874), 21 Gr. 492 at 509.

If the instrument contains so far as all the goods referred to are concerned, such a description as that a person desiring to deal with these goods and chattels, or the sheriff seeking to enforce an execution against the mortgagor, could, without any doubt or difficulty, satisfy himself on the point whether there were any, and if so, what, goods not covered by the instrument in question; and this should be the test of the sufficiency or insufficiency of a description which covers a stock-in-trade with after-acquired goods replenishing the stock: *Re Thirkell, Perrin v. Wood* (1874), 21 Gr. 492.

An attempt has been made to draw a distinction between substituted property and after-acquired property, as to the completeness of description, but it is doubtful if such a contention is tenable: *Chidell v. Galsworthy*, 6 C.B.N.S. 471.

An instrument describing after-acquired personalty in the words "all his present and future personalty," will only suffice to charge in favour of the vendee, as between the parties, all the personal property at the date of the instrument, but will not operate so as to charge after-acquired property; such a description does not confine the assignment to specific goods, but to undetermined property: *Tadman v. D'Eptneuil*, 20 Ch. D. 758. And though after-acquired property is properly and specifically described, yet inasmuch as the assignment thereof, though absolute in form, amounts to a contract to assign, for the breach of which the assignor incurs a liability provable in bankruptcy, and from which he is released by his discharge, such description will not cover goods brought on the premises after the discharge in bankruptcy has been granted: *Collyer v. Isaacs*, 19 Ch. D. 342.

In *Springer v. Graveley*, 34 C.L.J. 135, it was held, that although there is a sufficient interest in the increase of mortgaged cattle in favour of the mortgagor to give title to them free from the mortgage to a *bond fide* purchaser, an execution creditor is not in the same position, and can only take the legal title charged with the mortgage. The case was affirmed *sub nomine Graveley v. Springer*, 3 Terr. L.R. 120, 2 N.W.T. 306.

Where a chattel mortgage conveyed the stock-in-trade of the mortgagor, and "all goods which at any time may be owned by the mortgagor and kept in the said store for sale, and whether now in stock or hereafter to be purchased and placed in stock," it was held that after-acquired stock