

Proposed Amendments to the Specific Relief Act, 1877

The amendments to the Specific Relief Act, 1877, to limit the compensation and relief that courts can grant in cases relating to execution of infrastructure and development projects are proposed.

Background:

As a result of reviewing the Specific Relief Act, 1877 Act we suggest that changes are needed to remove bottlenecks in execution of contract-based infrastructure development, public private partnerships and other public projects. These proposals involve huge investments we have to also look at enforceability of contracts. Keeping in mind the present scenario involving contract-based infrastructure, public-private partnerships and other public projects involving huge investments and enforceability of the contracts.

What does the Specific Relief Act do?

Specific Relief is legalese for performing a contract when monetary compensation for failing to complete contractual obligations is not enough.

The law prescribes that in an event where the actual damage for not performing the contract cannot be measured or monetary compensation is not adequate, one party can ask the court to direct the other party to fulfil the requirements of the contract. This is called specific performance of a contract.

This extends to infrastructure contracts, like construction of housing societies, roads, bridges or sale and purchase of land.

Why government wanted to change the law:

Specific performance of contracts under the 1877 law is an alternative—only when monetary compensation is not sufficient can the court ask for it. There is a provision which says that there will be no specific performance of those contracts where monetary compensation is sufficient, or the contract involves performance of a continuous duty which the court cannot supervise. It is also a discretionary relief, that is, it is left to the court to decide whether specific performance should be given to a party asking for it. This gives rise to uncertainty in contracts.

The government wants to ensure that there is ease of doing business, and the specific relief law is a hindrance. Uncertainty in contracts often means investors become wary of getting entangled in legal trouble. Government has taken the initiative, and propel to the ease of doing business in Pakistan.

Infrastructure and development projects have seen a surge in litigation with a number of petitions being filed in the Supreme Court and various High Courts, most citing ecological reasons. As a result, these projects, which largely involve huge investments, are met with uncertainty.

The existing legal framework is also seen as hindering investors from investing in Pakistan. Pakistan has been notoriously low on the doing business ratings, particularly when it comes to ease of enforcing contracts.

Recommendations:

We suggest for specific performance to be made the rule and not an exception. This would mean that even if contractual obligations cannot be met, the court could ask the parties to fulfil terms of the contract. Monetary compensation will be an alternative when contracts cannot be fulfilled.

We also suggest guidelines to the courts for exercising discretion in these matters, in order to streamline how courts, interpret the provisions.

There was need to see whether intervention of courts in public works should be minimal.

In the present scenario involving contract based infrastructure development, public private partnerships and other public projects involving huge investments and enforceability of such contracts. We suggest changes so that specific performance is granted as a general rule and grant of compensation of damages for non-performance remains as an exception together with suggesting amendments to do away with the discretionary powers of the courts.

We suggest the following modifications to the Act:

1. Relief of specific performance should be made as the general rule of remedy for breach of contract and monetary compensation to be made as an alternate remedy.
2. For the purpose of streamlining the interpretation of the Courts in matters of public works. Punjab Judicial Academy should provide guidelines to the courts and tribunals to limit the Court's discretionary powers while granting performance and injunctive reliefs.
3. In cases of contracts, excluding government contracts, the Act should be modified to address the right of third parties as well.
4. Inclusion of provisions addressing unconscionable contracts, unfair contracts, reciprocity in contracts etc. and implied terms in a contract in the Act.
5. Furthermore, there is the need to address the Public Utility Contracts as a separate class of contracts. In order for the public work to progress without interruption, the Courts intervention in such contracts should be kept to a minimum. Subsequently the public works can then be managed through a monitoring system and regulatory mechanisms.

To Conclude

The modifications suggested here aspire to considerably boost foreign investment in the infrastructure and development sector. They aim at bringing about certainty as to the fate of the infrastructure and developmental works by standardizing the relief for non-performance. We expect this to reduce uncertainty in projects for infrastructure or those involving huge public investments. The recommendations are aimed at ensuring that public works contracts happen without unnecessary delays.

Proposed Amendment	Existing Provision
<p>19. Power to award compensation in certain cases</p> <p>(1) In a suit for a specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.</p> <p>(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.</p> <p>(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.</p> <p>(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.</p> <p>(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:</p> <p>PROVIDED that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.</p> <p>Explanation: The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.</p>	<p>19. Power to award compensation in certain cases.-</p> <p>Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance. If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly. If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly. Compensation awarded under this section may be assessed in such manner as the Court may direct.</p> <p>Explanation. The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.</p> <p>Illustrations of the second paragraph - A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just. of the third paragraph -A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1 st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal. of the Explanation - A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the nonperformance of the contract, and may, if necessary, amend the plaint for that purpose. A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the nonperformance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.</p>

Add a new section 19-A

19-A.-Save as provided by the Arbitration Act 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who had made such a contract other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it sues in respect of my subject which he has contracted to refer, the existence of such contract shall bar the suit.

20. Liquidation of damages not a bar to specific performance

(1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving, to the party in default an option of paying money in lieu of specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

20. Liquidation of damages not a bar to specific performance.-

A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration A contracts to grant B an under lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license. (b) Contracts which cannot be specifically enforced

21. Contracts not specifically enforceable

(1) The following contracts cannot be specifically enforced, namely,-

(a) a contract for the non-performance of which compensation is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty

21. Contracts not specifically enforceable-

The following contracts cannot be specifically enforced:-

(a) a contract for the nonperformance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(c) a contract the terms of which the Court cannot find with reasonable certainty;

(d) contract which is in its nature revocable;

(e) a contract made by trustees either in excess of their powers or in breach of their trust;

(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(g) a contract the performance of which involves the performance of a continuous duty extending over a

<p>which the court cannot supervise.</p> <p>(2) Save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.</p> <p>(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:</p> <p>(a) where the suit is for the enforcement of a contract,-</p> <p>(b) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:</p> <p>PROVIDED that where only a part of the loan has been advanced the vendor is willing to advance the remaining part of the loan in terms of the contract; or</p> <p>(ii) to take up and pay for any debentures of a company;</p> <p>(b) where the suit is for,-</p> <p>(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or</p> <p>(ii) the purchase of a share of a partner in a firm;</p> <p>(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:</p> <p>PROVIDED that the following conditions are fulfilled, namely,-</p> <p>(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;</p> <p>(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation</p>	<p>longer period than three years from its date;</p> <p>(h) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist. And, save as provided by the [Arbitration Act, 1940 (X of 1940)], no contract to refer 2 [present or future differences] to arbitration shall be specifically enforced; 3but if any person who has made such a contract 4 [other than an arbitration agreement to which the provisions of the said Act apply] and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.</p> <p>Illustrations to (a) A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent, loan of the 5 [Federal Government]. A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest: In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount; The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.</p> <p>to (b) A contracts to render personal service to B: A contracts to employ B on personal service: A, an author, contracts with B, a publisher, to complete a literary work: B cannot enforce specific performance of these contracts. A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed.;</p> <p>By a charterparty entered into in [Chittagong] between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to 2 [Karachi] and there load a cargo of rice, and thence proceed to London, freight to be paid, onethird on arrival at 2 [Karachi], and twothirds on delivery of the cargo in London; A lets land to Band B contracts to cultivate it in a particular manner for three years next after the date of the lease: A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery: A contracts with B that, in consideration of Rs.1,000 to be paid to him by B, he will paint a picture for B : A contracts with B to execute certain works which the Court cannot superintend: A contracts to supply B with all the goods of a certain class which B may require: A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach: A contracts to marry B : The above contracts cannot be specifically enforced.</p> <p>to (c) A, the owner of a refreshment room, contracts,</p>
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<p><i>in money for non-performance of the contract is not an adequate relief; and</i></p> <p><i>(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.</i></p>	<p>with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses, to perform his contract. The case is one for compensation and not for specific performance, the amount and the nature of the accommodation and appliances being undefined.</p> <p>to (d)– A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.</p> <p>to (e) A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced. The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced. Two trustees, A and B, empowered to sell trustproperty worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance. The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced.</p> <p>to (f)– A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cottonmill thereon. This contract cannot be specifically enforced.</p> <p>to (g)– A contracts to let for twentyone years to B the right to use such part of a certain railway made by A as was upon B’s land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary enginepower, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.</p> <p>to (h)– A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.</p> <p><i>(c) Of the Discretion of the Court</i></p>
<p>22. Discretion as to decreeing specific performance.-</p> <p><i>(1) The jurisdiction to decree specific performance is</i></p>	<p>22. Discretion as to decreeing specific performance.-</p> <p><i>The jurisdiction to decree specific performance is</i></p>

discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 : Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party

discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:-

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations :-

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship on the plaintiff.

Illustrations 1 * * * * *

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust estate to D, and personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase money is not nearly enough to discharge those encumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific

	<p>performance of the contract should be refused to D.</p> <p>(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.</p> <p>(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.</p> <p>(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.</p> <p>(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.</p> <p>(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B. The following is a case in which the Court may properly exercise a discretion to decree specific performance:—</p> <p><i>III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.</i></p> <p>Illustration A sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.</p> <p><i>(d) For whom Contracts may be specifically enforced</i></p>
<p>Add a new Section 55-A</p> <p>55-A Damages in lieu of, or in addition to, injunction</p> <p><i>(1) The plaintiff in a suit for perpetual injunction under section 54, or mandatory injunction under section 55, may claim damages either in addition to, or in substitution for, such injunction and the court may,</i></p>	

<p><i>if it thinks fit, award such damages.</i></p> <p>(2) <i>No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:</i></p> <p>PROVIDED <i>that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.</i></p> <p>(3) <i>The dismissal of a suit to prevent the breach of an obligation existing in favor of the plaintiff shall bar his right to sue for damages for such breach.</i></p>	
<p>56. Injunction when refused</p> <p><i>An injunction cannot be granted-</i></p> <p>(a) <i>to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;</i></p> <p>(b) <i>to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;</i></p> <p>(c) <i>to restrain any person from applying to any legislative body;</i></p> <p>(d) <i>to restrain any person from instituting or prosecuting any proceeding in a criminal matter;</i></p> <p>(e) <i>to prevent the breach of a contract the performance of which would not be specifically enforced;</i></p> <p>(f) <i>to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;</i></p> <p>(g) <i>to prevent a continuing breach in which the plaintiff has acquiesced;</i></p> <p>(h) <i>when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;</i></p> <p>(i) <i>when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;</i></p> <p>(j) <i>when the plaintiff has no personal interest in the</i></p>	<p>56. Injunction when refused.-</p> <p><i>An injunction cannot be granted-</i></p> <p>(a) <i>to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;</i></p> <p>(b) <i>to stay proceedings in a Court not subordinate to that from which the injunction is sought;</i></p> <p>(c) <i>to restrain persons from applying to any legislative body;</i></p> <p>(d) <i>to interfere with the public duties of any department of 2 [the 3 [Federal Government], 4* * * or any Provincial Government], or with the sovereign acts of a Foreign Government;</i></p> <p>(e) <i>to stay proceedings in any criminal matter;</i></p> <p>(f) <i>to prevent the breach of a contract the performance of which would not be specifically enforced;</i></p> <p>(g) <i>to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;</i></p> <p>(h) <i>to prevent a continuing breach in which the applicant has acquiesced;</i></p> <p>(i) <i>when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;</i></p> <p>(j) <i>when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;</i></p> <p>(k) <i>where the applicant has no personal interest in the matter.</i></p> <p>Illustrations</p> <p>(a) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.</p> <p>(b) A manufactures and sells crucibles, designating them as “patent plum bago crucibles,” though, in fact,</p>

matter.

they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of divers' rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.