of the business custom mentioned above, innocent purchasers would, nevertheless, accept such blank powers as effecting valid negotiations of the accompanying certificates and thus be misled to their detriment, especially where the power is presented to them after being filled in by the broker.

Equity—Misapplication of the Doctrine of Affirmative Mutuality in Statute of Frauds Cases—The Purchaser's Part Performance as Basis for Specific Performance for the Vendor—[New York].—The plaintiff promised orally to sell real estate to the defendant who entered into possession, paid part of the purchase price and made improvements on the property. The vendor sought specific performance of the contract. The defendant contended that the oral contract was unenforceable because of the Statute of Frauds. *Held*, the defense failed; although the doctrine of affirmative mutuality was inapplicable, the purchaser's long possession and the changes he had made in the property entitled the vendor to specific performance. *Walter v. Hoffman*, 267 N.Y. 365, 196 N.E. 291 (1935).

If the purchaser under an oral contract to buy land can show certain acts of part performance, he can enforce the contract despite the Statute of Frauds. Fry, Specific Performance § 588 (6th ed. 1921); Pomeroy, Specific Performance § 105 (3d ed. 1926). Shall the vendor be entitled to specific performance if the purchaser's acts of part performance would have entitled him to the same relief? In a few states, the answer has been a categorical "no." *Palumbo v. James*, 266 Mass. 1, 164 N.E. 466 (1929); *Bennett v. Dyer*, 89 Me. 17, 35 Atl. 1004 (1896); *Huntington & K. Land Development Co. v. Thornburg*, 46 W.Va. 99, 33 S.E. 108 (1899). In other jurisdictions, the vendor has been allowed to rely on the purchaser's acts and has been granted the remedy of specific performance. *Andrew v. Babcock*, 63 Conn. 109, 26 Atl. 715 (1893); *Witt v. Boothe*, 98 Kan. 554, 158 Pac. 851 (1916); *Tatum v. Brooker*, 51 Mo. 148 (1872); *Fay's Estate*, 213 Pa. St. 428, 62 Atl. 991 (1906). These decisions are understandable in the light of the rationale behind the doctrine of part performance. Some courts look upon the Statute of Frauds as having been designed to avert proof of a non-existent contract by perjury and fraud. Consequently, it is argued, if the parties' acts can be reasonably explained only by the existence of a transaction relating to the land in dispute so that there is clear and convincing evidence of the contract, the policy behind the statute is not disturbed by permitting specific performance. *Bradley v. Loveday*, 98 Conn. 315, 119 Atl. 147 (1922); *Keatts v. Rector*, 1 Ark. 391 (1839); *Price v. Hart*, 29 Mo. 171 (1859); *Burns v. McCormick*, 233 N.Y. 230, 135 N.E. 273 (1922). Since the policy is saved by proof of such acts, it should be immaterial whether the plaintiff's or the defendant's acts furnished the required evidence—the acts of either party should be sufficient to entitle both parties to specific performance; in fact, the defendant's acts are even more desirable proof of the transaction than are the plaintiff's. Other courts in order to justify going behind the Statute of Frauds to grant specific performance require that the acts must not only be unequivocably referable to the contract, but, in addition, that the plaintiff must have experienced such an irreparable change of position in reliance on the contract that in order to prevent hardship, relief should be afforded him. *Shaver v. Wickmire*, 335 Ill. 46, 166 N.E. 458 (1929); *Hudgins v. Thomason*, 109 Tex. 433, 211 S.W. 586 (1919); *Kennedy v. Anderson*, 49 Wash. 14, 94 Pac. 661 (1908). Where this view is accepted, part performance by the purchaser may be regarded as having changed the vendor's position, since the purchaser's acts usually involve a change in the land—a change which the vendor should not be compelled to accept by a denial of relief. *Chambers v. Rowe*, 36 Ill. 171 (1864); *Witt v. Boothe*, 98 Kan. 554, 158 Pac. 851 (1916); *Tatum v. Brooker*, 51 Mo. 148 (1872); *Fay's Estate*, 213 Pa. St. 428, 62 Atl. 991 (1906).

Many courts afford the vendor relief on a distinctly different theory, that of affirmative mutuality. These courts assert that if the purchaser's acts entitled him to specific performance, the vendor is entitled to the same remedy. *Dollar v. Knight*, 145 Ark. 522, 224 S.W. 983 (1920); *Sweeney v. O'Hora*, 43 Iowa 34 (1876); *Pearson v. Gardner*, 202 Mich. 360, 168 N.W. 485 (1918); *Cooper v. Thomason*, 30 Ore. 161, 45 Pac. 296 (1896). But the doctrine of affirmative mutuality is properly applied only where the defendant has a right to specific performance and the only reason for denying it to the plaintiff is the adequacy of his legal remedy; it is not designed to afford relief in equity to a plaintiff who could obtain none at law. See 1 Univ. Chi. L. Rev. 631 (1934). To apply the doctrine in favor of one who has not changed his position and cannot point to acts indubitably indicative of the existence of the transaction is an unjustified relaxation of the Statute of Frauds and reduces the effectiveness of the statute as a safeguard against fraud. It is an egregious misapplication of the doctrine to allow specific performance to the vendor in cases where he has no remedy at law merely because the purchaser would have been entitled to specific relief. Furthermore, it seems likely that in some of the cases resorting to the doctrine of affirmative mutuality, reliance thereon was in fact unnecessary because specific performance might have been granted to the vendor on the theory that the purchaser's acts of part performance changed the vendor's position quite as much as if the acts were the vendor's own. See *Pearson v. Gardner*, 202 Mich. 360, 168 N.W. 485 (1918); *Cooper v. Thomason*, 30 Ore. 161, 45 Pac. 296 (1896).

Abandonment of affirmative mutuality in favor of the change of position theory as the basis for granting the vendor specific performance would have at least two advantages: first, it would lead to a clearer conception of the affirmative mutuality doctrine; and, second, it would lead to the application of a test for relief that has some reasonable relation to the equities of the situation. In refusing to apply the doctrine of affirmative mutuality, the New York court properly recognized that the doctrine has no application in this class of cases; in holding that the vendor, in the instant case, was entitled to specific performance, the court properly recognized that the purchaser's improvements may so change the condition of the land that it would be unjust to force the vendor to take back the land.

Garnishment—Liability of Bank under Attachment of Stock Certificates in Its Possession—[Illinois].—The plaintiff garnisheed the defendant bank for the purpose of reaching certificates evidencing shares of stock in an Illinois corporation. The shares were owned by the plaintiff's judgment debtor and the certificates were in the possession of the bank under an escrow agreement. On the termination of this agreement, and after service of garnishee summons, the bank returned the certificates to the owner. The plaintiff sued the bank for the amount of the judgment against his debtor, which was less than the market value of the stock. The trial court gave judgment for the defendant. *Held*, reversed. Stock certificates are a proper subject of garnishment under the Illinois statute providing that garnishee summons may be issued to attach "any effects or estate" of a judgment debtor in the possession of a third person. Ill. Rev. Stat. 1935, c. 62, § 1. Redelivery of such effects to the debtor after garnishee