courts hold the contrary where, as here, the benefit sought to be enforced is the liability on a fidelity bond executed by the dishonest agent.[8]

It would seem that the question of whether an insured shall be permitted to recover in this latter situation should turn on a question of contract rather than on the technical doctrine of imputed notice.[9] Probably the parties had no "actual intention" with respect to the matter in issue at the time the contract was executed. Where such ambiguity of intent exists, the courts of necessity must determine what the parties would have intended had the specific question been presented at the time;[10] and it would seem fair to assume that, if it had been considered when the bond was issued, the parties would have intended that the bond cover the matter.

The federal court in the present case, however, was required[11] to follow Pennsylvania law[12] which denies recovery to the principal because of the doctrine of imputed notice. It is submitted that the better rule is in accord with the majority view which permits a recovery on the bond.[13]

P. H. A.

EQUITY—SPECIFIC PERFORMANCE AND INJUNCTION—INEXACT AND DISCRETIONARY OBLIGATIONS OF CONTRACTING PARTIES—[Federal].—Defendant invented and patented a unique type of military tank. By contract, plaintiff became the exclusive agent of defendant for the sale and manufacture of

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8. American Surety Co. v. Pauly (1898) 170 U. S. 133; Maryland Casualty Co. v. Tulsa Industrial Loan & Inv. Co. (1936) 83 F. (2d) 14, 105 A. L. R. 529; Fidelity & Casualty Co. v. Gate City Nat'l Bank (1895) 97 Ga. 634, 25 S. E. 392, 33 L. R. A. 821, 54 Am. St. Rep. 440.

9. In Fidelity & Casualty Co. v. Gate City Nat'l Bank (1895) 97 Ga. 634, 25 S. E. 392, 393, 33 L. R. A. 821, 54 Am. St. Rep. 440, Lumpkin, J., said, "* * * we cannot think that the parties to this contract contemplated that the bank would be bound to act upon mere constructive notice of Redwine's [the agent] shortcomings. The 'knowledge' referred to meant actual knowledge."

10. Reed v. Insurance Co. (1877) 95 U. S. 23; Higgins v. California Petroleum & Asphalt Co. (1898) 120 Cal. 629, 52 Pac. 1080; Hamill & Co. v. Woods (1895) 95 Iowa 246, 62 N. W. 735. See Corbin, *Contracts* (16th ed. 1924) 425, sec. 354.

11. Under the rule of Erie R. R. v. Tompkins (1938) 304 U. S. 64, 114 A. L. R. 1487. The court said, per Maris, J.: "The mere fact that the decision in Gordon v. Continental Casualty Co., supra, would seem to us somewhat out of line with the general trend of the authorities both in Pennsylvania and elsewhere cannot, under the case of Erie R. Co. v. Tompkins, above cited, be of more than academic interest to this court." First Nat'l Bank of Weatherly v. Aetna Casualty & Surety Co. (C. C. A. 3, 1939) 105 F. (2d) 339, 341.

12. Gordon v. Continental Casualty Co. (1935) 319 Pa. 555, 181 Atl. 574, 104 A. L. R. 1238.

13. Generally, where a contractual ambiguity arises in the case of fidelity or guarantee contracts, the courts construe them strictly against the insurer, and such surety's obligation is not considered to be strictissimi juris. Galveston Causeway Construction Co. v. Galveston, H. & S. A. Ry. (D. C. S. D. Tex. 1922) 284 Fed. 137; Royal Indemnity Co. v. Northern Granite & Stone Co. (1919) 100 Ohio 373, 126 N. E. 405, 12 A. L. R. 378. See Note (1921) 12 A. L. R. 382, where many authorities are collected.

the tank and for the sale of rights for its manufacture by others. On payment of $5,000, plaintiff was to receive from defendant the plans of the tank and to begin selling manufacturing licenses to foreign countries. Licenses were to sell at a minimum of $50,000, and an additional charge for each country was to be determined by plaintiff and defendant, who were to divide the license fees equally. Before a license could be sold to a particular country, moreover, both parties had to agree that the sale was "practical." Plaintiff paid the $5,000 but defendant refused to deliver the plans. Plaintiff then brought a bill for specific performance and for an injunction to prevent defendant from appointing any other agent. *Held*, that the complicated and uncertain nature of plaintiff's obligations prevented the granting of an injunction, just as the complicated and uncertain nature of defendant's obligations prevented the granting of specific performance.[1]

Equitable relief has generally been granted in cases involving contracts for the sale of unique chattels, where damages would be inadequate.[2] When the terms of a contract, however, are so uncertain as to make difficult the framing and supervision of the decree, equity has refused to grant specific performance.[3] On the other hand, injunctive decrees, negative and prohibitory in function, require comparatively little judiciary supervision for enforcement in most personal service contract cases.[4] Such injunctions seem never to have been refused before in personal service contracts, on the ground that the plaintiff has obligations to the defendant which are inexact and discretionary.[5]

It was orthodox, then, to refuse to enforce specifically this contract which required the parties to agree on such matters of opinion as to which countries to sell licenses, and how much to charge. Frequent contempt proceedings might have resulted from honest differences of opinion, compelling the court to decide, after extensive inquiry what, under the contract, would be reasonable conduct for the defendant.

In refusing an injunction, the court seems not to have considered that

1. Bethlehem Engineering Export Co. v. Christie (C. C. A. 2, 1939) 105 F. (2d) 933.

2. 5 Williston, *Contracts* (Rev. ed. 1937) 3954, sec. 1419, and cases there cited, n. 6; Restatement, *Contracts* (1932) sec. 361, comment e.

3. 5 Williston, *Contracts* (Rev. ed. 1937) 3986, sec. 1424, and cases there cited, n. 1; Restatement, *Contracts* (1932) sec. 370, comment b. But see Walsh, *Equity* (1930) 328, sec. 65; Mayor of Wolverhampton v. Emmons (1901) 1. K. B. 515; Storer v. Great Western Ry. (1842) 2 Y. & C. C. C. 48, 63 Eng. Rep. 21.

4. "There is no inherent difficulty, however, in the enforcement of an injunction which goes no farther than to prohibit entering into other employment." 5 Williston, *Contracts* (Rev. ed. 1937) 4049, sec. 1450.

5. Singer Sewing Machine Co. v. Union Button-Hole & Embroidery Co. (C. C. D. Mass. 1873) Fed. Cas. No. 12,904 (exclusive agency for sale of patented sewing machines); Brush-Swan Electric Light Co. v. Brush Electric Co. (C. C. S. D. N. Y. 1890) 41 Fed. 163 (exclusive agency for sale of patented generating equipment). These cases are cited in the principal case as the only two cases directly in point, contra to the court's decision, and poorly reasoned.

it might order the defendant to remain completely inactive.[6] Instead, the court reasoned thus: "But the continuance of such an injunction would depend upon continuance of the defendants' obligation to the plaintiff; and the continuance of that obligation would in turn depend upon the plaintiff's continued performance of its duties under the contract. These are as uncertain as the defendants' * * *."[7] This language seems to indicate that the court based its decision on some phase of the doctrine of "lack of mutuality." If so, it was not on the discredited doctrine of "lack of mutuality of remedy"[8] but on what some writers have termed "lack of mutuality of performance."[9] Regardless of what the doctrine be called, the court here indicated that it would grant an injunction only if it could be assured that the plaintiff would perform his duties under the contract.[10] Since the plaintiff's duties were so uncertain, the court felt that, should an injunction be granted, it would be difficult to know if the plaintiff were performing.

Assuming, as it did for argument's sake, the existence of a contract enforceable at law, the court correctly found it not specifically enforceable in equity. It is submitted, however, that the court could as readily have denied relief because mutuality of obligation in the purported contract was altogether lacking.

T. B.

INSURANCE—PARTIAL DESTRUCTION OF INSURED PREMISES—EFFECT OF A MUNICIPAL ORDINANCE UPON LIABILITY OF INSURER—[Wisconsin].—An insured house was damaged to the extent of fifty per cent of its original value; and thereafter, in accordance with a municipal ordinance, it was ordered razed. In an action upon the fire insurance policy, *held*, that the insurer was liable for the total value of the house.[1]

This case restates the general rule that, where a building is partially destroyed and, pursuant to a fire ordinance, is either ordered completely

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6. Such an injunction would not have benefitted the plaintiff; it would have merely penalized the defendant. Such injunctions are not favored in equity. See Metropolitan Exhibition Co. v. Ewing (C. C. S. D. N. Y. 1890) 42 Fed. 198, 199, 7 L. R. A. 381, 383; Rice v. D'Arville (1895) 162 Mass. 559, 561, 39 N. E. 180, 181; Tribune Ass'n v. Simonds (N. J. Eq. 1918) 104 Atl. 386, 389; Arena Athletic Club v. McPartland (1899) 41 App. Div. 352, 353, 58 N. Y. S. 477, 478; 5 Williston, *Contracts* (Rev. ed. 1937) 4051, sec. 1450.

7. Bethlehem Engineering Export Co. v. Christie (C. C. A. 2, 1939) 933, 935.

8. See McClintock, *Equity* (1936) 116, sec. 66. Earlier in its opinion the court disclaimed any considerations of "mutuality", but whether it meant lack of mutuality of obligation or of remedy does not clearly appear.

9. Ames, Mutuality in Specific Performance (1903) 3 Col. L. Rev. 1, 8; McClintock, *Equity* (1936) 116, sec. 66.

10. See Cook, The Present Status of the "Lack of Mutuality" Rule (1927) 36 Yale L. J. 897, 904; Restatement, *Contracts* (1932) sec. 373, where a formal label for this "equity" is avoided but the process for discovering it is described.

1. New Hampshire Fire Ins. Co. v. Murry (C. C. A. 7, 1939) 105 F. (2d) 212.