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Parol Contracts for the Sale of Land

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T H E S I S.

PAROL CONTRACTS FOR THE SALE OF LAND.

-By-

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Cornell University School of Law

1893.

C O N T E N T S.

PAROL CONTRACTS FOR THE SALE OF LAND.

History and Comparison.

The terms "buying and selling land" when strictly applied relate only to estates in fee. Accordingly, if a tenant for life or years transfers his estate in property absolutely, he is spoken of as having made an assignment, and not a sale of that interest. This distinct use of the terms, in speaking of estates in fee and those for a less period, has evidently grown out of the allodial system of tenures adopted in this country ; while in England it has probably resulted from the enactment of the Statute Quia Emptores, 18 Edw. I. In both countries, then, it will be seen that the term "sale" has been strictly employed in relation to transfers of estates in fee ; and, though there is apparently little reason for the partiality, still it application has been thus specifically limited.

By the ancient or fictitious doctrine, which originated in the usages of feudal times, the tenant of an estate in fee is claimed to hold his estate as party of the second part in

a grant executed, and to which the state is party of the first part. But, by the terms of this grant, the grantee is not made liable to payment, and, as authoritatively admitted, could not be, either as an express condition of the grant, or by any collateral agreement, even though the grantor be a sovereign state. Hence has arisen the custom of designating that class of tenants "land owners", and their agreements to transfer their rights in the property as buying and selling land. There is good reason to believe, however, that had the feudal system, with the ordinary incidents peculiar to it, been generally adopted here, the terms "buying and selling" could not be properly used in speaking of agreements to transfer land. An agreement by a tenant to transfer his land, in that case, would have been known as an agreement to assign his claim, and not to "sell" it. The result thus produced is plainly the product of commerce, and not of the feudal law.

The change of terminology has, of course, been attended with some evil results. The tendency during this renovating period has been to lose sight of the fundamental features of real-property law, since those whom we designate as land owners are in reality only parties of the second part in

grants from the state. The persons may be the original or subsequent holders ; that is, they may have it directly from the state, or as grantees, assignees, or devisees of the original possessor. We forget also that the rights of these parties are merely contract rights of possession ; that individuals cannot own land as they own personal property, and that absolute ownership of it is in the state where the land lies, and can be nowhere else.

The great writers of feudal history have rightly taught that occupants under the feudal tenure system held claim to estates in fee, as in those for life or years, to a right of possession only, and thus conferred by the instrument effecting it. This contract right of possession secured by the instrument was the only interest the tenant had in the land which was the subject of the transaction between them. By the early feudal law the tenant was not permitted to sell or assign this contract interest which he had in the property. It was his to possess for life only, at first ; but later this restriction was withdrawn to such an extent as would allow his heirs to succeed to the interest, under a fictitious presumption that they were equal parties with himself to the lease. Finally, however, as the tenant's right to

alienate became less and less restricted and he was allowed to sell or assign his interest, the individual right of possession grew to appear more like an absolute right in the property. But still there were many incidents under the feudal tenure system which continually reminded the tenant of the fact that his interest was only leasehold, and of his relation to the lessor or reversioner. Further, in changing from the ancient feudal to the modern allodial system, the incidents which were before calculated to remind one of the leasehold character of his tenancy were now so entirely swept away that the tenant came to be regarded as the absolute owner of the land, without considering how he became such, or the impracticability of the position from the very nature of things.

In place, then, of the definite idea laid down by the feudal law as to what was the right of the tenant in fee, the minds of the modern investigators are often left unsatisfied until this distinction can be seen. To understand the practicable operations instituted in a sale of land, it is necessary to have correct ideas as to what interest an individual can have or hold that he may sell, and what constitutes the title which is to be sold. In an estate in fee the tenant

has precisely the same sort of interest which he may sell as the owner of a less estate, it differing only in what is called the quantity of the estate, so that he agrees to sell and perfect the title in the same manner. The form of the agreement and the ultimate expression may or may not be different, but the operation and effect will be practically the same. According then to the established idea of property right, this tenant, as party of the second part to a grant from the state, voluntarily agrees to sell and assign his grant or contract right in the premises. This must be the subject of the transaction, as he has nothing else which he may sell, except his contract right to possess and enjoy the land to the exclusion of all others. But as the contract right is not attended with obligations of rent or service on the part of the tenant, or ceremony of fealty in token of his dependence, in such grant from the state, its authority is not mentioned or recognized as a necessary part of the agreement to convey. The original owner then sells the land, as though he had the absolute property independent of all grants or contracts, and the grant of the state, so far as his subsequent grantees, &c., are concerned in later conveyances made by them, is left out of sight, and usually

unknown or thought of by them. It will therefore be seen that by this method of operating all circumlocution is avoided, and the result thus obtained is the same, to the extent of the land described, as though the grant of the state was specifically recited in the instrument.

These fictitious grants of the state are, as a matter of course, divided among the different owners according to the area of the land described, each being a party of the second part to the extent of the land which he has acquired. But as no rents or profits are or can be reserved by the state as a condition of this holding, no circumstances are presented which tend to remind the parties that any such thing as tenure exists and forms the foundation for the title they claim under.

The laws regulating the negotiations between the parties to these transactions and their relation to each other is known as the law of vendor and vendee. The popular signification of the terms "sale of land" seems to be generally limited to transfers of estates in fee, but this does not affect the legal view of the subject to which they properly apply, and which must necessarily be otherwise. It may be accepted, then, that the terms "sale of land" embraced two distinct points for consideration, viz. ; the land which is the sub-

ject of the conveyance, and the contract which establishes a right in the property.

Mutual Agreement.

It is evident at the first sight that every voluntary alienation of land or an agreement therein must necessarily be preceded by an agreement of such extent as will completely effectuate the intention of the parties. If this mutual purpose is to be immediately carried out or executed, no particular legal form is required that the intended result may be acquired. But when any time is to intervene between the making and the complete fulfilment of the agreement, it is necessary that it be put in particular legal form in order that it may be effective and binding upon the parties thereto.

Executory and Executed Contracts.

A distinction is this line is usually quite evident and derterminable, so much so, that there may be easily said, and perhaps uselessly, that no conflicts exist in the decisions. The question which should here receive some attention is, whether an executed contract can be considered a contract at

all. The point first received serious attention in the case of Fletcher v. Peck, (6 Cranch,) which arose from an act of the Georgia Legislature, which had attempted to avoid a grant of land made by it to a citizen of that State. This claim of right was contended by the grantee, on the ground that the act was contrary to the provision of the Constitution which forbade the States to enact laws impairing the obligations of contracts. The judgment in this case, which was probably one of the most important rendered in the early history of the Supreme Court, so firmly and satisfactorily decided that the act was within the legislation prohibited by the Constitution, that the position taken has ever since been received as the correct one and without question.

In returning to the objective point under this head for the purpose of considering a method of distinguishing executory from executed contracts, it will be seen that a satisfactory result may be best drawn out by asking the question : Has the contracting party the same title or interest in the property which he had before making the contract ? If the question is answered in the affirmative, the contract is executory ; if in the negative, it is executed. The question might also be, as to whether the party into whose possession

the land was to go had acquired other and greater interest in it than he previously held ; and if so asked, is entitled to a result analogous to that in the previous question. In examining these questions, however, the transfers of interest must be strictly limited to legal interests, as they in no way apply to those of an equitable nature.

After the above division of the main subject into executory and executed contracts, each of these are again subdivided into two great classes : executory, into those which by reason of some informality or irregularity (which is a condition precedent) cannot be treated otherwise, and those which must be so treated in order to carry out the intention of the parties ; and executed, where one or the other of the parties has fully performed his part, and the so-called leaseholds or estates are less than a freehold. The latter estate, however, as regards the lessor and lessee, is rather executory, but as to all other persons the lessee has a vested right and estate in the property. This may also be strengthened by the view under the modern system, since here the above distinction is not made, and all persons claiming as lessees from the state or subsequent holders hold a vested right in the property.

Common Law Rule.

Since the vote of Parliament adopting the Statute of Frauds, in the reign of Charles II, was almost a contemporary of the legislation allowing the tenant of an estate in fee to dispose of his property, there are very few cases reported, either of great or little importance, which examined and propounded the law on this subject as it existed just prior to the enactment of the now famous statute.

Immediately following the enactment of the Statute of Frauds in England in 1676, the purpose of which, as laid down in its preamble, was to prevent the many fradulent practices in respect to land contracts, which were generally furthered by perjury and subordination thereof, most of the then colonies, but later members of the United States, first accepted and established this English idea almost literally. The modern statutes on this subject, or the revisions of the original in the different States, have substantially the effect of its predecessor, but as experience has taught, and the requirements of life presented the various difficulties of the situation, most of these States have modified and varied its provisions to meet the apparent requirements.

The substance and main feature of the statute was to require a writing of the facts connected with an agreement for the transfer of land, as the only sufficient evidence of contract relations existing, and the only evidence which could -- with one exception -- secure the injured party the aid of a court of justice in a suit for specific performance.

Some few of the early States, among them Pennsylvania, adopted only part of the English statute, excluding that in relation to land contracts ; and the courts of that State held, in the precedent established in Ewing v. Tees, (1 Binney -- Pa.) that the rules of common law were alone applicable, and the 4th section of the English statute was unrecognized and of no effect. Under the common law rules, however, the purchaser could always recover money or legal damages, where he had paid something in execution of his part of the contract. But in many cases this relief was entirely inadequate in balancing the injury sustained by the active and abiding party, and as a vested right was necessary to the securing of equitable relief, the court having jurisdiction of this matter could only be brought to bear where the grantee had been put in possession under the contract and thereupon performed acts of such a permanent and personal character that

it must work a direct and inequitable fraud upon the party in possession if the promisor were allowed to reject and cancel the contract at his own option. So, therefore, as the court of equity had deemed it its duty to co-operate to prevent this fradulent injury before the enactment of the statute, much more could it be deemed justified in allowing the honest work of the possessor to stand as sufficient evidence of the actual contract relations existing after its passage. By so doing, it would also prevent the use of the statute which would otherwise further the fradulent actions. But in all these cases it must be remembered that possession under the contract must be open and with the consent or acquiescence of the vendor.

This particular relief or remedy is given in respect to contracts for realty as distinguished from personalty, in that this class of property is quite liable to have peculiar or special value, which the purchaser alone recognizes, and which cannot be duplicated, or other facts affecting value which a jury would not and could not account for in giving damages. It is therefore evident that under no circumstances will a court decree specific performance where a payment of money is the only act of part performance, as in this case a

court of law can always give adequate relief.

Written Evidence Required.

The Statute of Frauds, in its application to contracts for the transfer of interests in land, embodies as its only and great feature the requirement that such contracts must be evidenced by a writing and shall be signed by the party, or his agent lawfully authorized by a writing. This writing, more explicitedly considered, must contain all the main facts on which the contract is based or operates. It need not, however, be in the form of a theme, but may as well be in the shape of an account when such plan fairly expresses the agreement. The requirement before mentioned is not, as may be at first supposed, such as to regulate the fact of what is or shall hereafter be considered a contract ; but states that those same relations, when subsequently created between parties, shall not have legal force and effect unless the positions of the parties to the contract can be shown and proved by a writing drawn at its creation and signed by the party to be charged, or his attorney authorized by a writing.

The purpose of this statute, as its wording plainly

expounds, was to protect the parties from mis-statements, whether intentional, or innocently made as the result of forgetfulness, and from false testimony of witnesses brought in to prove the terms of the contract. It seems that at the time of the adoption of this statute in England the alienation of land had become quite general, and as agreement, and that by parol, was alone customary, they became the subject of continuous litigation, implanted with perjury.

What Constitutes an Interest in Land.

This question is one which has been often before the courts of both England and the several States of this country, and though the decisions on this point are not entirely in harmony, still, as the conflict is more apparent than real, it is not of sufficient importance to require special attention. The principal questions to be here investigated are in respect to the two subjects, License and Grant.

A license, to be well defined, is a privilege to act in respect to the land of another in such a way as not to affect the title of the owner, yet to give the licensee such immunities as will excuse him from liability in an action

of trespass. A license gives the privilege and time for doing an express act, but if not, must allow a reasonable time, so that the licensee may not suffer injury thereby.

The distinction between grant and license, then, is that the second party to the contract for license gets merely an excuse for trespass, which cannot have legal and binding force until completed, and which may be revoked by the party of the first part at any time without the consent of the licensee, except where a reasonable or definite period was agreed upon, and revocation before the end of this period might work great injury upon the licensee. But as to the latter class, in respect to a definite period, this regulation cannot be said unhesitatingly to apply, since there is then but an apparent difference between it and a grant, and upon which the decisions of the courts can hardly be spoken of as harmonious. Grants give either a right of possession or an incorporeal right, while licenses give neither. They also require consideration to make them effective, if executory, but this is not at all an essential to the creation of a license.

The true method, however, to determine the existing relation is that commonly employed in expounding all con-

tracts. In doing this, the question to be asked is : What have they expressed, and how have they expressed their intentions ? If it be only a license, it may be created by parol and without consideration, as it is under all circumstances independent of the Statute of Frauds.

Licenses Divided.

Licenses have been divided in four classes, viz. : (1) Those which cannot have other effect, being parol ; (2) those which must so operate because of the character of the interest involved ; (3) those in which it is their express intention ; and (4) those in which it is the implied intention of the parties.

Those transactions which could only operate as licenses by reason of informality, necessarily take this position from the wording of the statute, which requires written evidence to effect, and without which the courts could only give it the force and effect of a license. The distinction, then, is not in respect to the character of the land under consideration, but only the manner in which the interest was claimed. In other words, the status depended on whether the contract

was in writing so as to create a grant, or only by parol so as to operate as a license. As to the class dependent upon the species of interest involved, there has been little conflict in the decisions. This division does not base its reason for distinction upon the intention of the parties, but, like the previous one, upon a less prominent point. The character of the interest which must be considered in determining between the parties in order to place them under the right head is of different kinds ; the one which may readily come within the term "license" is restricted to those claims in which neither the land, an interest therein, nor its occupation is the subject of the agreement, but is really only a collateral thereto. For example, an agreement to go upon the land of another for the purpose of plowing, etc. The agreement though destroying the effect of a suit for trespass, also allows the party to go upon the land for the particular purpose, but does not in any way give such an interest as is regulated by the Statute of Frauds. This permission to enter and act in regard to lands of another without acquiring any interest therein, is only a license, and this is so whether the agreement had been oral or reduced to writing. These licenses may also be implied from the

apparent holding out of the premises for public use, but may as well be upon similar agreement for consideration, as otherwise, and must be dependent upon the custom of those previously occupying it. The latter method of holding or occupying property may be such as would at first have given a cause of action in trespass, but may finally transform itself into an absolute right and title, if there be an open and adverse possession for a sufficient period to satisfy the Statute of Limitations.

Licenses Distinguished from Grants.

A license is a mere personal privilege or excuse from doing an act with relation to the real estate of another which if unauthorized would give the licensor or owner a cause of action against the licensee in trespass. And having also the quality of personality, the claim which the licensee holds in the property can in no way be effective if transferred, so that by no method, whether by assignment or gift, can the transferee get any claim to privileges which might previously have been enjoyed by his grantee. The claim differs from a grant, as before mentioned, in that no consideration is

necessary to make it effective, and the mutual obligation which is always found in cases of grant is not a necessary factor in the creation of a license. This relation between the parties is often established, as we shall see hereafter, where the circumstances are such that though the parties may have intended a grant to result, the law gives it only the effect of a license.

This distinction, though quite apparent, seems to have been somewhat overlooked by the earlier decisions, thereby causing, as must be expected, an almost indiscriminate use of the words "grant" and "license." The view thus taken necessarily produced a proportionate effect upon the certainty with which they applied the statute to various cases as they arose. It might here be effectual then, if attention be drawn to the fact that the statute applies only to those cases where the parties intended to transfer an absolute and transferable right in the property ; that is, such a right as would necessarily restrict the powers of the owner and increase those of the grantee in the particular property. The title of the licensor, however, is not diminished or the licensee's increased, and as the privilege to act may be revoked at any time at the option of the owner, the claim of

the licensee can only be effectual where the act has been completed.

Licenses Revocable.

The expenditure of money does not as a general thing make a license in respect to which the payment was made irrevocable ; except, perhaps, where the privilege was impliedly limited to a particular period of time. In the latter case the extent of time allowed is usually what would be presumed to be a fair and reasonable period in which to carry out the work the licensee had in view, and that upon which the owner had figured in allowing it, in order that his own rights might be protected.

Next, it should also be noted that there has been a noticeable lack of harmony in the decisions upon the point of giving the effect of licenses to particular arrangements for the use of another's land for an express period and upon consideration, without it being effected, as the ordinary agreements for an interest in land, by the requirements of the Statute of Frauds. By this unsatisfactory state of things, parties may or may not come within the statute, as

the particular court may decide.

To revoke a license, it is always necessary that the licensee should have notice of the owner's intention to withdraw the privilege under which he has been acting. The revocation, though in no way affecting the lawfulness of the previous operations, will subsequently have the effect of making any act of the person in derogation of the owner's right a trespass, and subject him to liability therefor. The notice above mentioned need not of necessity be formal or particularly expressed, but is sufficient if it in any way shows an intention to revoke. For example, we may take the case of a pretending purchaser, who takes possession of the property under an agreement to pay for the premises by instalments which are to become due at definitely appointed times. Here the license under which possession is given would be revoked immediately after default of the licensee in making the first payment as agreed upon, whether the default be openly made by refusal after demand, or simply by the non-compliance. So a conveyance of property in which a license is claimed will be sufficient notice to the licensee to quit the premises, without further formalities.

License Coupled with Interest.

These licenses are really a combination of two licenses, each of which have at the same time separate and joint duties to perform. It exists, for example, in such cases as where a person is licensed to enter and erect buildings on the land of another, with a necessarily accompanying license (usually implied) by which he is privileged to remove the building when the license allowing the use of the land upon which it is standing is revoked. This condition though somewhat contrary to the general rule which requires a defeasible arrangement, is still so equitably within the rule that it should be given the effect of a license, so as to allow an entrance for the purpose of removing the building. It may also be seen that where the particular acts to be performed under a license have been partly performed by the licensee upon the faith of the agreement, it may become a contract in equity which will have the effect of preventing a revocation by the owner at such an unexpected time as to work great injury upon the licensee. It might be effected by an estoppel in pais on the ground of statements and actions on the part of the owner, which if effectual would not prevent what damages might not

adequately remedy.

It should be kept in mind, however, that in all cases where particular circumstances do not exist, a license is revocable at any time at the will of the owner. The revocation of a license must always result from a conveyance of the property or an interest therein, if in any way antagonistic to the claim of the licensee.

Interests within the Statute of Frauds.

This branch of the law necessarily involves the question as to what is and what is not a part of the land. Under this head, vegetable products are the chief source of litigation ; and although the opinions upon the point ably consider the question, the law upon it is quite unsettled and subject to variation. These vegetable products are divided into two classes : those which are produced yearly, after being once planted, without further attention or cultivation ; and those which depend upon special yearly planting to bring them into existence. The first class, (products naturales) are usually termed perennials, since in these all outward signs of life disappear annually, while the root and stem survive for years,

during each of which it produces its crops of leaves, &c. The second class (products industriales) as before said, include only those which perish annually, and usually result from special yearly plantings.

As regards the legal side of the subject, the main difference in the legal status of the two classes is that the second class (which results only from special planting and cultivation) is always subject to execution and sale as chattels or personal property. The probable origin of this distinction is that recognized in an early New York Report, which notes the fact that formerly (that is, during feudal and early Common Law times) the crops raised were generally the property of tenants, while the land upon which they were raised belonged to another -- the lord.

Products of the Soil.

It is quite evident by what reasoning this class of productions might be brought within the range of the Statute of Frauds. Here the person planting a crop must have the use of the land during its growth, and also the incident which would allow him to enter and remove the crop when it had

fully matured.

A distinction should here be noticed, as laid down in several decisions, that the interest which is within the Statute of Frauds only exists as long as the plant is growing ; and when it can be said to have fairly matured or ripened, it no longer constitutes an interest in land within the Statute, but is rather mere personal property, entirely independent of the land in which they were grown. This rule was laid down in an early English case, in a suit to determine the status of a crop of potatoes which had matured. The decision was to the effect that the potatoes, though still in the ground, were no more a part of the land than if they had just been placed in a box or other vessel and that put in the ground, upon the reasoning that as soon as they had matured, the connection and the reason therefor immediately ceased, so that after that time their position was merely one of protection or shelter. Although the decisions on this subject are not as harmonious as might be wished, still these questions may often be settled by looking at the apparent intent of the parties, so that occasionally where it appears as though an interest in land is to pass, it must always operate to the contrary if that is the intention of the

parties. By looking at them in this light it will be seen, as held in various decisions, that growing crops may or may not be the subject of a conveyance.

Exception to General Rule.

These cases necessarily treat of the status of crops under various conditions and circumstances. In examining these, we would probably ask the question, whether a contract for crops must necessarily include an interest in land within the meaning of the Statute. This question, however, can only be answered by looking at the character and special provisions of the agreement under consideration.

An example of this condition of things may be found in those cases where growing objects or crops are the subject of the contract, and in which there is an express or implied condition as to time of transfer, which must be in futurity. If the subject of the agreement is fruit, the time of transfer will be maturity ; but in the case of growing trees, only after the performance of some act of the vendor which is necessary to change its legal status so that it may be unaffected by the requirements of the Statute of Frauds.

The first part of the subject has been satisfactorily settled, and the general holding is to the effect that so long as the object or subject of the contract is separated from the soil, on the faith of the contract, title will immediately vest in the vendee the same as though for any personal property. But if the subject of the contract is not severed and changed as agreed by the parties, so that it may take the form of personalty, no interest is acquired in the property under the parol agreement, and no satisfaction can be had except by way of damages. The best method of viewing this, however, seems to be (if for standing timber), that the agreement in no way effects an interest in land, but that by it the vendor agrees for part of a lump sum that he will separate the property as contemplated by the agreement, and will then, for the balance, actually transfer the property which is the subject of the negotiations, the same as ordinary personalty.

Particular and Limited Interests.

These interests include all claims incident to title in land which take the quality of permanency in the shape of

structures erected thereon, together with any fixtures which may have been permanently annexed to it. All this, though not a part of the soil naturally, thus becomes of the realty, and an agreement to convey it cannot be enforced unless the written requirement of the statute is produced. To this, however, special exception has been made in the case of a sale of the structure, accompanied by a license to remove it from the premises. Here it will be seen that the licensee has an interest coupled with his privilege to remove, so that his right to remove cannot be affected by revocation or the Statute of Frauds.

It has also been decided that a writing is necessary in order to enforce a contract for possession of property, on the ground that it was for an interest in land within the meaning of the Statute which requires such evidence. This rule may also be extended to cover all agreements for exchange or release between parties.

Mineral Products.

Under the present condition of the law, especially in the United States, it would appear almost unreasonable to

treat these as anything but what is now designated "land" or a part thereof, as recited in the only common definition of it. But under early English law, they were not treated as part of the property of the person owning the surface, but were held as the exclusive property of the Crown. During the early period of valuable mineral discoveries in America and the allotment of Government land to settlers, some recognition of Government right was visible, but it was almost immediately released, upon the adoption of the present allodial system. This system recognizes in a grantee absolute claim to all property within his boundary, whether it be above or below the surface of the land ; and it seems to be the only fair and liberal rule which could be adopted. According to this, then, everything is part of the land which is permanently attached, and any agreement to transfer title to it must necessarily be evidenced by the writing which the Statute of Frauds requires.

Part Performance.

Having now reached the pivotal point, our attention should be drawn to the interesting question in which the

course of reasoning in acquiring a satisfactory result is often misunderstood by examiners. The point is, whether the law regards the part performance of a parol contract for land an equivalent and substitute for the written memoranda required by the Statute of Frauds. In answer to this, we may say that the Statute makes no exception to the general requirement, and the law does not recognize it as supplying the deficiency and giving it the same validity as a contract in writing. It is often stated that certain acts of part performance take parol contracts out of the Statute, or make the writing unnecessary, but if the cases upon this are closely examined it will be seen that the apparent is not the real meaning of the words used, and that the effect given in no way depends upon the legality of the contract. The exceptional effect which is given is only in a court of equity, and under the same circumstances as its power was invoked before the passage of the Statute. It did not act by reason of any provision contained in the contract, but only as before the Statute, and which would now, if not avoided in equity, aid and protect the very fault which its enactment was to prevent. The specific ground for its action was to enforce an estoppel which had been raised under fraudulent

statements of the vendor, for which legal damages were entirely inadequate and which equity alone could sufficiently remedy. Before the enactment of the Statute (as above mentioned), the court of equity had often deemed it its duty to prevent immeasurable damages through fraud, so that subsequently, since not specially restricted, it was deemed a further duty to carry out its real purposes, though it might at the same time be disregarding the literal and apparent requirements. The equity courts then only interfered, as before the Statute, when the vendee had acted upon the agreement, changed his position upon the faith of it, and in general so acted that if the vendor was allowed to cancel it and take his former place he would derive great advantages, while the vendee would suffer inestimable loss and injury from the fraud practiced upon him.

A sufficient part performance, to secure equitable aid in avoiding the literal requirements of the Statute, must always be such as will give satisfactory evidence of the facts upon which the acts are based, and at the same time place the vendee in such a position that money damages cannot replace him. The first essential is that the vendee must have been put or let into possession without dissent. But the pos-

session must have been taken or announced by a special and independent act, since the holding over by a tenant is not a sufficiently open evidence of the exact contract relations to allow equitable cognizance. Neither is a part or full payment of the purchase price admitted to be sufficient part performance. So, it must appear upon summarizing these facts, that parol contracts for the sale of land or an interest therein can only be effective in carrying out the agreement when (as before the great work of Nottingham) inestimable injury would result which the court of equity alone could and would remedy.