

fact of continued possession is not of itself conclusive. He must rely on something more. In *Nunn v. Fabian*, 13 L.T. Rep. 303, L. Rep. 1 Ch. 35, a yearly tenant in possession of certain premises claimed specific performance of an agreement between himself and his landlord, whereby the latter agreed to grant him a lease for twenty-one years at an increased rent, and an option to purchase the freehold. In pursuance of this agreement the tenant paid some rent at the increased price, but before the lease was granted the landlord died. The executors refused to execute the lease, and proceeded to advertise the premises for sale. They set up the Statute of Frauds as a defence to the tenant's suit. The Lord Chancellor (Lord Cranworth) found that there was clear evidence of the alleged agreement, and held that the payment of rent at the increased rate fixed by the agreement was a sufficient part performance to take the case out of the statute. Specific performance was, therefore, decreed. Another case of continued possession ought to be mentioned. In *Williams v. Evans*, 32 L.T. Rep. 359, L. Rep. 19 Eq. 517, a tenant in possession filed a bill against his landlord for specific performance of a parol agreement for a lease of thirty years. On the faith of this agreement the tenant had agreed to sublet the premises, and had allowed his sub-tenant to execute certain works in the nature of alterations and repairs to buildings. These works had been done with the knowledge and approval of the landlord. Vice-Chancellor Mains held that the doing of these works was just as much a part performance as if they had been done by the tenant, and he decreed specific performance.

The next class of cases to be considered is where possession has not been given under the contract, and where the party seeking specific performance is not in possession under a previous title—in other words, where there is no continuance in possession. As we shall shew later, it is to this class that the recent case before Mr. Justice Sargant belongs.

The best example of this class of case is furnished by the case of *Dickinson v. Barrow*, 91 L.T. Rep. 161, (1904). 2 Ch. 339.