

1875. <sup>Ross  
v.  
Scott.</sup> circumstances the Court saw its way to giving the plaintiff relief; while here the transactions has been wholly completed, the conveyance executed, and the defendant in answer to the claim of the plaintiff sets up the statute as a defence. He also referred to *Montacute v. Maxwell* (a).

Mr. *Boyd*, for the plaintiff. The only question here is that raised under the Statute of Frauds. Here there is a resulting trust, and plaintiff it is shewn changed his position on account of the agreement and promise of *Scott*. He contended that 1st on the ground of agency, and 2ndly by reason of the fraudulent conduct of the defendant the decree already pronounced should be affirmed. In addition to the cases cited on the original hearing he referred to and commented on *Taylor v. Salmon* (b), *Cowell v. Watts* (c), *Dale v. Hamilton* (d), *Davis v. Otty* (e), *Coles v. Pilkington* (f), *McCormick v. Grogan* (g).

Judgment.

BLAKE, V. C.—I retain the opinion expressed at the hearing of this cause, without holding that the Statute of Frauds does not apply where a clear case of fraud is proved against the defendant, although none of the cases to which I referred go that far. I think we are so far bound by the authorities as that we must come to the conclusion, that circumstances of apparently trifling weight will enable a plaintiff to succeed, notwithstanding the Statute of Frauds is raised as a defence. I think that which was relied upon by the plaintiff is sufficient for the purpose here. In addition to the cases cited to me in the Court below, there is the authority in the Privy Council of *McCormick v. Grogan*. There Lord *Hatherley* says, in regard to the admission of parol testimony, to prove a trust: "But this doctrine

(a) 1 P. W. 618.

(c) 2 H. & Tw. 224.

(e) 35 Beav. 208.

(g) 4 E. & I. App. 82.

(b) 4 M. & C. 184.

(d) 5 Hare 391.

(f) 23 W. R. 41.