

It was contended by Mr. Bicknell that before parol evidence is admissible it must appear, from the act relied on itself, that it is referable either to the very contract alleged or at all events to some such contract, and that in this case the possession of the respondent Donaven was or might be referable to his tenancy of the land during the lifetime of his father and mother; and in support of that contention the language of the Lord Chancellor (Selborne) in *Maddison v. Alderson*, where he says, "All the authorities shew that the acts relied upon as part performance must be unequivocally and in their own nature referable to some such agreement as that alleged," was relied on.

It is plain, I think, that the Lord Chancellor did not, by the use of the words "some such agreement as that alleged," intend to state the principle in narrower terms than those in which it is stated in *Fry on Contracts* and *Halsbury's Laws of England* (loc. cit.); for he cites, in support of his statement of the law, *Cooth v. Jackson* (1801), 6 Ves. 12, 38; *Frame v. Dawson* (1807), 14 Ves. 386; and *Morphett v. Jones* (1818), 1 Swans. 172, 181; . . . *Dale v. Hamilton* (1846), 5 Hare 369, 381. . . .

[Reference also to the speech of Lord O'Hagan in *Maddison v. Alderson*, 8 App. Cas. at pp. 484, 485; *Jennings v. Robertson* (1852), 3 Gr. 513, 523, 524.]

The acts of part performance in the case at bar fall well within the principle which I take to be established by the cases; and, the terms of the parol agreement being clearly proved, are sufficient to take the case out of the Statute of Frauds.

The case was argued by Mr. Bicknell as if the agreement which is sought to be enforced consisted of two parts: one an agreement that the respondent Donaven should become tenant of the land during the lifetime of his father and mother and the survivor of them; and the other that he should have the land upon the death of the survivor of them; but that is not either the form or the substance of the agreement. It is an agreement to grant and convey the land to the son, upon condition that he shall pay what is called the rent and preserve and properly care for the land and buildings during the lifetime of the father and mother and the survivor of them, on breach of which the land is "to revert" to the father.

There was, therefore, but one agreement under which the son was let and entered into possession; and, even if the rule were as narrow as Mr. Bicknell contended it is, the case would have fallen within it.

In my opinion, the appeal fails and should be dismissed with costs.