

in *Morphett v. Jones* (1818), 1 Swan. 172, specific performance was decreed where the plaintiff had been let into possession and expended large sums of money on repairs and improvements. In *Pain v. Coombs* (1857), 3 Sm. & G. 449, a decree for specific performance was made of a verbal agreement to grant a lease of a farm. The plaintiff had in this case also been let into possession, and had expended moneys in cultivating and managing the farm in accordance with the terms of the verbal agreement. In that case Vice-Chancellor Stuart pointed out the difficulty of treating acts of cultivation as referable to the contract. "Where there is an uncertainty," said the Vice-Chancellor, "as to the terms of the contract, there is a great danger in attempting to stretch the law of those cases in which part performance is held to take a parol agreement out of the operation of the Statute of Frauds. On the other hand, where there is a reasonable degree of certainty as to the terms of a parol agreement for a lease, and where the tenant has been let into possession and has expended money on the faith of the agreement, it is the duty of the court to find grounds, if it can, for preventing the possession from being disturbed by a strict adherence to the letter of the Statute of Frauds." Letting into possession, followed by acquiescence in improvements made by the party so let in, were also the grounds for decreeing specific performance in the case of *Stockley v. Stockley* (1812), 1 V. & B. 23. But that case was one of a family arrangement.

But mere possession of itself is not necessarily part performance. Thus, suppose a tenant in possession of land under a lease just expired sets up a new agreement, his retaining possession is just as referable to a mere holding-over as to any such alleged agreement. His continuance in possession is not, therefore, an act of part performance: see *Wills v. Stradling* (1797), 3 Ves. 381.

But it is equally clear that because a man is in possession under a prior title he is not debarred from setting up part performance in support of a new agreement to extend his interest or enlarge his interest in the premises. But in such a case the