

SPECIFIC PERFORMANCE.

diary to and for the purposes of the verbal and only real agreement, under circumstances which would make the use of it for any purpose, inconsistent with that agreement, dishonest and fraudulent." Again in *Davis v. Otty*, 35 Beav. 208, a conveyance of land was made on the parol agreement that the defendant should reconvey if the plaintiff was not convicted of bigamy. The defendant denied the agreement and set up the Statute of Frauds, inasmuch as the alleged trust was not in writing; but the Master of the Rolls held that this was a case of fraud on the part of the defendant and, therefore, the Statute did not apply. In *McCormick v. Grogan*, L. R. 4 Eng. & Ir. App. 82, Lord Westbury sets in a different light the principle which influences the Court in such cases in the following words: "The jurisdiction which is invoked is founded altogether on personal fraud. It is a jurisdiction by which a Court of Equity, proceeding on the ground of fraud, converts the party who has committed it into a trustee for the party who is injured by that fraud. The Court of Equity has from a very early period decided that even an Act of Parliament should not be used as an instrument of fraud; and if, in the machinery of perpetrating a fraud, an Act of Parliament intervenes, the Court of Equity, it is true, does not set aside the Act of Parliament, but it fastens on the individual who gets a title under that Act, and imposes upon him a personal obligation, because he applies the Act as an instrument for accomplishing a fraud." It will be observed that this is merely an amplification of Lord Hardwicke's language in *Lloyd v. Spillett*, 2 Atk. 150, where he speaks of one class of resulting trusts which are excluded from the operation of the Statute as those which arise "in cases of fraud and where the transactions have been carried on *mala*

fide," and see the same case more fully in *Barnard*, 384.

Likewise as to the effect of part performance in excepting a case from the Statute of Frauds. It has been fully determined, after some fluctuation of opinion, that the mere going into possession is sufficient to let in evidence of the whole contract though none of it be in writing: and this doctrine is applicable as well to corporations as to individuals, and whether it be that the vendor or the purchaser brings suit, and consequently whether it be that the purchaser relies on possession as being *taken* by him, or the vendor relies on possession as being *delivered* by him, in pursuance of the contract. To this effect is the expression of opinion of the Lords Justices in *Wilson v. West Hartlepool Railway Company*, 2 De G. J. & S. 475, where during argument they intimate their view that a purchaser being let into possession was sufficient part performance, whether the contract was sought to be enforced by or against him (p. 485). And at p. 492, Turner, L. J., enforces the same doctrine as to corporations being bound to the same extent as individuals. Reference may also be made to *Pain v. Combs*, 1 De G. & J. 46, on the same point. The moment such taking of possession is shewn, the length of the continuance of that possession is not of much consequence. Indeed one Judge has stated his opinion to be that such possession, "if it be for an hour only" is enough to take the case out of the Statute: *Ungley v. Ungley*, L. R. 4 Ch. Div. 73.

In cases such as these the Statute of Frauds is in truth practically repealed by the Court of Chancery, under the euphemism of excepting the case from its provisions. But such judge-made law has become part and parcel of our legal system, even though it be in the shape of an excrescence. Nothing short of