

MALICIOUS PROSECUTION—CORPORATION, LIABILITY OF, TO ACTION FOR MALICIOUS ACT—LIABILITY.

In *Cornford v. Carlton Bank* (1899) 1 Q.B. 392, Mr. Justice Darling has decided a point which ever since the obiter dictum of the late Lord Bramwell in *Abrath v. North Eastern Ry.*, 11 App. Cas. 247, has been frequently the subject of judicial comment, viz., whether a corporation can be guilty of malice, Lord Bramwell, it may be remembered, declared that "a corporation is incapable of malice or of motive," his opinion being that, while those of the directors or shareholders who maliciously set the corporation in motion might be made liable, the corporation itself could not. This view has failed to meet with approval, and in the present case the point was expressly taken by the defendants at the trial of the action, which was one for malicious prosecution, and, as we have intimated, was overruled, the learned judge preferring to follow the judgment of Fry, J., in *Edwards v. Midland Ry.*, 6 Q.B.D. 287, and judgment for £100 damages was given in favour of the plaintiff.

SALE OF GOODS—ORAL CONTRACT—PART PAYMENT—RETENTION OF MONEY DUE ON ACCOUNT OF PRICE—STATUTE OF FRAUDS, s. 17.

Norton v. Davison (1899) 1 Q.B. 401 is a case which turns on the Statute of Frauds, s. 17. The action was brought on an oral contract for the sale of goods, and it was a term of the contract that a sum of money which had been overpaid the vendor on some prior transaction should be retained by him and applied on account of the price, and the question was whether this constituted a part payment under the statute. The Court of Appeal (Lords Halsbury, L.C., and Smith and Chitty, L.JJ.) held that the point was covered by the case of *Walker v. Nussey*, 16 M. & W. 302, and that it did not amount to a part payment within the Act, and the decision of Wright and Darling, JJ., to the contrary, was overruled, and the judgment of a County Court Judge dismissing the action was restored. "It is plain that the provisions of the Statute of Frauds, and those of the Sale of Goods Act, 1893, which correspond to them, require that, in the absence of a writing, there should be something in addition to the mere oral contract, namely, acceptance and receipt of the goods, or something given in earnest to bind the contract, or part payment in order to make the contract enforceable. Therefore, where the existence of the sup-