

contempt, he may take any defensive measures." *Morrison v. Morrison* (a) is to the same effect.

1875.

Mitchell
v.
Mitchell.

Dismiss plaintiff's motion without costs.

Dismiss defendant's first ground of appeal without costs.

ROSS V. SCOTT.

Principal and agent—Parol agreement—Statute of Frauds.

Where it was shewn by evidence that the defendant had agreed to attend and buy in a property, offered for sale by auction, as the agent of the plaintiff and for his benefit; *Held*, notwithstanding the Statute of Frauds had been set up as a defence and there was not any writing evidencing the agreement, that the plaintiff was entitled to a decree to carry out the agreement.

This was a re-hearing at the instance of the defendants, of the decree reported *ante* volume xxi., page 391. Statement.

Mr. C. Moss, for the defendants.

The agreement, promise, or engagement, proved to have been made or entered into here was a merely honorary one, and as such not capable of being specifically enforced by this Court. The same principle is involved here as where a man conveys to another on a secret trust without obtaining any writing to evidence the trust, the Court will not enforce it. In *Bartlett v. Piekersgill* (b) there was quite as much fraud in resisting the claim of the plaintiff, and yet the Court refused to interfere. It is said the statute will not be used as an instrument of fraud, but in *Heard v. Pilley* (c) no conveyance had been made and all rested *in fieri*, and under those

(a) 4 Hare 590.

(b) L. R. 4 Ch. 548.

(c) 1 Eden 515.