

in *Olley v. Fisher* "be right there is no reason for not extending it to a case where the statute is pleaded," because, he says, "it is settled that that statute can afford no defence to an action for rectification." The cases which he cites upon this latter point appear, upon examination, to be all cases in which, not executory contracts, but deeds or documents evidencing executed contracts, have been rectified: see pp. 700, 703. Moreover, as Mr. Williams says, before there can be rectification there must be evidence of a common intention that the document to be rectified should contain the whole contract, and that the omitted terms were left out by fraud or mutual mistake: p. 701. In many cases where plaintiffs have sought specific performance of agreements relating to land, the terms of which have been only partly evidenced in writing, there have been very emphatic expressions of opinion that such relief, against an unwilling defendant who pleads the statute, must be denied. . . . [Reference to *Attorney-General v. Sitwell*, 1 Y. & C. Ex. at p. 583; *Davies v. Fitton*, 2 D. & War. 225, 232; *Fry on Specific Performance*, 4th ed., sec. 815.

There are some dicta from which an inference may be drawn that certain Judges inclined to a contrary view, but nowhere do I find that view in terms expressed, nowhere can I find that it has ever been made the basis of a binding and authoritative decision, unless, perhaps, in the case of *Martin v. Pycroft*, referred to below. In many of the text books there is much learning expended upon a discussion of the question whether rectification and enforcement can be granted simultaneously. The late case *May v. Platt*, [1900] 1 Ch. 616, casts some doubt upon the right to grant such double relief even in cases to which the Statute of Frauds does not apply. But the weight of English opinion seems to favour the exercise of such jurisdiction in those cases, and with us the question is so concluded: *Carroll v. Erie County Natural Gas and Fuel Co.*, 29 S. C. R. 591, 594; *Clark v. Walsh*, 2 O. W. R. 72.

Where the Statute of Frauds applies, however, plaintiff's difficulty is not due to his demand for double relief; it consists in this, that, though the contract be rectified, the portion of it which is evidenced by parol is not and cannot be thus made an agreement, memorandum, or note in writing, signed by the party to be charged. It is not until he seeks to