

24th, defendant notified plaintiff that he receded from the bargain. It was held by Lord Ellenborough that this was a contract for an interest in land within the 4th section of the Statute of Frauds and, therefore, that the agreement was void, but that it would have been otherwise had the defendant entered on the premises.

In *Dart on Vendors and Purchasers*, 6th ed., p. 228, the point is dealt with as follows: "And although the actual demise by parol for any term not exceeding three years at a rent not less than two-thirds of the improved value is valid under the second section of the statute, an executory agreement for such a demise is void unless in writing. So a parol agreement by a lessee for an assignment for the residue of his term, being less than three years, is void."

Then what will be the effect of the payment of a part of the proposed rent? *Maddison v. Alderson* (1883) 8 App. Cas. 479, is authority for the proposition that a payment of part, or even the whole of the purchase money, will not be treated as part performance. There were earlier cases where individual judges expressed varying opinions (for instance, the cases cited in the *Digest of English Case Law*, vol. 13 at p. 1770, in which a distinction is attempted to be drawn between payment of earnest money and payment of a substantial sum on account), but the law is now apparently well settled. In *Maddison v. Alderson*, Selborne, L.C., says: "It may be taken as now settled that part payment of purchase money is not enough; and judges have said the same even of payment in full." All the other judges agree with Lord Selborne and there are no qualifying words.

The above case was discussed by Baggallay, L.J., and Brett, L.J., in *Humphries v. Greene*, 10 Q.B. 148. Adopting the language used by the Court of Appeal in *Maddison v. Alderson*, Baggallay, L.J., thought that the words of Lord Selborne ought to be qualified by the following words: "Unless it is shewn that the payment was made in respect of the particular land and the particular interest in the said land which is the subject of the parol agreement"; but Brett, L.J., differed directly from Baggallay, L.J., holding that the mere payment of part, or even of the whole, of the purchase money will not be sufficient, under any circumstances, to exclude the operation of the statute.