defendant and amply corroborated by the erection of the monument upon the plot.

Reference to Lester v. Foxcroft (1701), Colles's P.C. 108, White & Tudor's L.C. in Eq., 7th ed., vol. 2, p. 460, Shirley's L.C., 9th ed., p. 127; Dickinson v. Barrow, [1904] 2 Ch. 339; Mundy v. Jolliffe (1839), 5 My. & Cr. 167.

In this case there was an agreement, for valuable consideration, and there was part performance which permitted that agreement to be shewn and parol evidence to be admitted for that purpose.

Again, the defendant had been in possession of the plot for more than 10 years, and under the Limitations Act her possessory title was valid. It was not denied that the possession and occupation by the defendant was complete so far as the portion of the land upon which the monument stood was concerned; but it was denied that this included that portion of the plot required for the burial of the defendant and her husband. In that the learned Judge was unable to agree. The defendant was not a trespasser in what she did. The placing of the monument had relation to the portion of the plot given to her by her brother for the purpose of the burial of herself and her husband; and the possession of the part occupied by the monument carried with it possession of the plot given to her by her brother.

It was contended by counsel for the plaintiff that the defendant had no more than an easement or license, referring to Bryan v. Whistler (1828), 8 B. & C. 288; but that case had no application to the present. The plot in this case was obtained for the express purpose of burial, and there was good consideration and a part performance in the defendant refraining from purchasing and by the erection of the monument. Some agreement was intended, and parol evidence was admissible to shew what that agreement was. If the grant was of an easement, there was an interest in land to which it could attach—it was not an easement in gross. The Bryan case was referred to in Ashby v. Harris (1868), L.R. 3 C.P. 523, 529; see also McGough v. Lancaster Burial Board (1888), 21 Q. B.D. 323, 327. However, upon the facts, the agreement was not for an easement, but constituted a grant of land for valuable consideration.

The appeal should be dismissed with costs.

RIDDELL and SUTHERLAND, JJ., read judgments agreeing in the result.

KELLY, J., also agreed in the result, for the reasons given by SUTHERLAND, J.

Appeal dismissed with costs.