

sole objection to its sufficiency. I have no doubt that the receipt in evidence here sufficiently shews Edwin Green to be the purchaser from Stevenson.

The remaining and most formidable objection is that founded upon the omission from the receipt of all reference to the special terms as to interest and taxes. These terms, admittedly a part of the bargain, rest in parol. Can the Court, against a resisting defendant who pleads the Statute of Frauds, decree specific performance of an agreement, without the purview of that statute, of which an essential term is not in writing? Cases in which the requirements of the statute have been satisfied by part performance must be put carefully aside, as must also cases in which the written memorandum is absent or defective because of the fraud of defendant.

I am unable, upon principle, to distinguish such a case as this from the long line of decisions by which it has been established that, although the defendant in his plea admits an oral agreement, it cannot be enforced against him if he nevertheless insists upon the bar of the statute. To enforce against an unwilling party, pleading the statute, a mere oral contract which he admits, would do no greater violence to the provisions of the statute than would be done by enforcing against such party a contract of which only some of the essential terms are evidenced by writing.

There has been some discussion upon the question whether, on the ground of mistake, a court of equity may upon parol evidence reform a written agreement, and may in the same action decree specific performance of the rectified instrument. When this question arises upon an executory agreement for the sale of lands, and is complicated by a plea of the Statute of Frauds . . . the judgment of a Divisional Court in *Knapp v. Carley*, 3 O. W. R. 940, declares it to be important and difficult. Learned writers express the view that this double relief may be given in cases not within the Statute of Frauds: *Fry on Specific Performance*, 4th ed., p. 353; *Kerr on Fraud*, 3rd ed., p. 459; and judicial countenance has been given to this view: *Olley v. Fisher*, 34 Ch. D. 367. But from these statements cases within the Statute of Frauds have been carefully excepted. Mr. Cyprian Williams, in his recent book on *Vendor and Purchaser*, expresses, at p. 707, the view that if the decision