

The original defendant, in his statement of defence, objected that the proper parties were not before the Court, and at the trial the adult heirs at law of the deceased (other than Zenas), were added (by their written consent) as plaintiffs, and the only infant heir at law was added as a defendant, the Official Guardian representing him and delivering a defence.

The defendant counterclaimed for a declaration of his right to possession, or for compensation for his improvements, alleging an agreement with his father.

The action and counterclaim were tried without a jury at London.

J. M. McEvoy, for the plaintiffs.

Edmund Meredith, K.C., for the defendant Zenas Gallinger.

F. P. Betts, K.C., for the Official Guardian.

SUTHERLAND, J., in a written judgment, said that the intestate had, at the time of his death, in addition to the 50 acres in question, a farm of 100 acres, on which he had been living with his wife and some of his children; and the defendant Zenas Gallinger, while claiming the 50 acres, also claimed a share in the 100 acres. He had been living at home with his father and mother on the 100 acres up to the time of his marriage on the 9th April, 1913. At the trial he stated that, about a month before this, his father made a bargain (not in writing) with him, by which he gave him the 50 acres, telling him "to go on and do with it as he pleased, as it was his." Upon his marriage he went into possession. He also said that part of the bargain was that he should pay the interest on an existing mortgage on the 50 acres and the principal when due. He further stated that, in compliance with and reliance upon the agreement, he had ever since remained in possession of the 50 acres, had had entire control thereof, and had paid the taxes thereon and the interest on the mortgage from year to year; also that, with the knowledge of his father, he made extensive improvements of the value of about \$2,000 on the 50 acres. His father, he said, had intended to convey the land to him, and on one occasion had gone to a solicitor's office for the purpose of having a conveyance drawn.

The learned Judge, after a careful examination of the evidence, said that he was unable to find, upon the evidence as a whole, that the defendant Zenas Gallinger had shewn that the agreement put forward by him in his statement of defence had been proved. The Statute of Frauds was a bar to the claim. The alleged acts of part performance were in part equivocal and might be attributable to an expectation on the son's part that the father would leave the property to him by will. It was clear that the