

upon what terms he was to come back, and it was arranged that the terms should be the same as those set out in the formal agreement of February, 1911.

After the son returned, he paid rent and lived up to his obligations under the agreement in question. The father and mother were both killed in a railway accident on the 21st July, 1913. The son now claims the land under the written agreement, or, in the alternative, under the verbal agreement made when he returned to the farm.

I accept the evidence of the son in its entirety, and I think it is amply corroborated, if corroboration is necessary, by the other evidence given on his behalf. I think there was part performance of the contract made at the time of the return of the son to the farm, so as to take the case out of the Statute of Frauds.

The plaintiffs rely upon *Maddison v. Alderson*, 8 App. Cas. 467. While in that case it was held that there was no part performance and that the statute must have its operation, the reasoning appears to me altogether in favour of the defendant. As put by the Earl of Selborne (p. 476): "So long as the connection of those *res gestæ* (i.e., *res gestæ* subsequent to and arising out of the contract) with the alleged contract does not depend upon mere parol testimony, but is to be reasonably inferred from the *res gestæ* themselves, justice seems to require some such limitation to the scope of the statute" as that recognised by the equitable doctrine or part performance.

Possession, the payment of the stipulated rent, the making of repairs upon the barn, the removing of the large stones from the land, are all acts, it seems to me, referable to the contract, and not consistent with any other relationship between the parties. See *Hodgson v. Husband*, [1896] 2 Ch. 428; *Bodwell v. McNiven*, 5 O.L.R. 332; *Williams v. Evans*, L.R. 19 Eq. 457; *Dickinson v. Barrow*, [1904] 2 Ch. 339.

Here there was undoubtedly a parol contract which could be specifically performed if in writing. There is no uncertainty as to its terms; because the former written document sets them out at length; and the whole conduct of the parties is consistent with the resumption of the former relationship and inconsistent with any other state of facts. This renders it unnecessary to consider any of the other arguments presented by the defendant.

The action fails, and must be dismissed with costs, unless the defendant sees fit to forego them.