

It has been remarked that the effect of the decisions of Courts of Equity is often virtually to effect a repeal of statutes under the pretext of construing them, and it appears to us that the class of cases of which the foregoing is a specimen is justly open to that observation.

The supreme desire of British Courts of justice ought to be, and undoubtedly is, to effect substantial justice between litigants; and in cases of the kind we have mentioned the Court perceives or, thinks it perceives, that to give literal effect to the Statute of Frauds would be virtually to enable a defendant to perpetrate and profit by a fraud, whereas the statute, as its title shews, was intended to prevent frauds and perjuries. In the case we have put it may justly be said that the defendant has not only committed a fraud in denying and refusing to carry out the bargain, but he has, moreover, in order to carry out his fraud, committed wilful and corrupt perjury. Now it is certain that where that is the moral position of a defendant, he has no claim to anything but the strictest justice: but bad as his conduct from a moral standpoint may be, he is nevertheless entitled to have that measure of justice meted out to him; and, except in cases where courts of justice have a lawful discretion, no suitor is entitled to any more or any less.

The words of the 6th section of the Statute of Frauds (R.S.O. c. 338), are plain and explicit; why is not a defendant, no matter how bad he may be, entitled to rely on them? "All declarations or creations of trust or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect."

In the case we have put A. is the person by whom the alleged trust was created, and unfortunately A. has signed no paper or writing manifesting such trust. If C. were to sue A. or his representatives, to enforce the alleged trust, could he succeed? Manifestly not, assuming that the payment of the \$100 was a mere matter of bounty. Is C. in any better position against