

of the rule, to a degree at least, nullifies the purpose of the Statute of Frauds, for it permits the results of litigation to be determined by oral testimony, one of the things primarily sought to be eliminated by the enactment of the statute. We believe the holding of the California courts in the *Adler* case, to the effect that the contract pleaded in defence "must be valid in itself, and such may be made the basis of an action," to be the better rule, for while it may work a hardship in individual cases, a thing that is not uncommon to the law, it would, at least, eliminate the possibility of perjured oral testimony, and render definite and known what would otherwise become indefinite and uncertain.—*Central Law Journal*.

An action for personal injury once instituted passes to the representative of the pursuer on his death. If, however, the injured person dies without raising action, does the right of action transmit to the executors? On this question there have been divergent views. In some cases the opinion was expressed that the moment the delict has taken place the right vests in the sufferer of it, which right is part of his patrimony, and transmits to his executors like any other piece of property. The other view was, and it has been the one which has received favour from recent decisions, particularly *Bern v. Montrose Asylum* (20 R. 889), that if a person who has sustained injury dies without taking steps to obtain reparation, his executor cannot take action. This left open the question whether the only way in which the injured person could intimate his intention to enforce his right to reparation was by raising action. The institution of an action certainly is the best proof that the injured person intended to press his claim; but is it the only proof? The Court have now held, in *McEnaney v. The Caledonian Railway* ([1913], 1 S.L.T. 373), that there are other ways of manifesting such intention, so as to give a title to executors to recover. In that case the claim had been intimated by the deceased to the third party responsible, and the deceased in his will specially assigned to his executors his claim against the railway company. The action was raised after the death of the party injured, but it has been found that his executors had a title to pursue it.—*Law Magazine*.