

HIGH COURT OF JUSTICE.

Falconbridge, C.J.K.B.] *BODWELL v. McNIVEN.* [Dec. 12, 1902.

Specific performance—Taking possession—Acts constituting—Part performance.

Possession is part performance both by and against the stranger and the owner.

On the negotiations for the purchase of land the owner's agent told the defendant that the lot was his. Defendant went on and set in the ground a number of stakes to mark out the foundation of a proposed house and then changed his mind and refused to carry out the purchase.

Held, that what he had done constituted such a taking of possession as to constitute part performance and that the plaintiff was entitled to the usual judgment for specific performance.

Hegler, K.C., and J. H. Hegler, for plaintiff. J. M. McEvoy and J. L. Patterson, for defendant.

Falconbridge, C.J.K.B.] *HAY v. BINGHAM.* [Dec. 22, 1902.

Libel—Pleading—Whole article—Producing and reading at trial—Words tendering immaterial issue—Embarrassing—Striking act.

The very words complained of in an action of defamation must be set out by the plaintiff in order that the Court may judge whether they constitute a cause of action—it is not sufficient to give the substance or purport with innuendoes—it is sufficient to set out the libellous passages provided; that nothing be omitted which qualifies or alters the sense; and, as the libel itself must be produced at the trial and the defendant is entitled to have the whole of it read,

Held, that the plaintiff was entitled to set out in the statement of claim the whole article complained of. But,

Held, also, that certain words in another paragraph which tendered an issue not material, but which might be embarrassing, should be struck out.

Deyo v. Brandage (1856) 13 Howard P.R. (S.C.N.Y.) 221, referred to. Judgment of a local master varied.

McVeity, for the appeal. Glyn Osler, contra.

Britton, J.] *LOVELL v. GIBSON.* [Feb. 9.

Practice—Costs—Lower scale—Amount claimed reduced by trial judge.

In an action in the High Court for \$340 the balance of a \$790 account for logs, \$450 of which was paid before action, the trial judge found the