

seeks rectification, and, for the reasons given, he is not entitled to that.

This case is on principle very different from *Hoig v. Gordon*, 17 Gr. 599. See also *McClung v. McCracken*, 3 O. R. 596.

The defendants plead the Statute of Frauds. That, in my opinion, is a good defence as to Mrs. Longtin. The deed signed by her merely to bar dower was not intended by her to authenticate any contract for the sale by her of land to the plaintiff. There was, therefore, no authentication in writing signed by her as to the contract which the plaintiff seeks to have performed.

There was no part performance by Mrs. Longtin. The possession by the plaintiff for the short time mentioned by him cannot be part performance. Taking the note was wholly by the husband. No unequivocal act of Mrs. Longtin was shewn in reference to part performance by her of any alleged contract, other than agreeing to bar dower.

Even as a matter of judicial discretion there could be no specific performance awarded. The plaintiff is not . . . in a position to clear the west half of this land from the \$2,800 mortgage, nor are the defendants able to pay the Magee mortgage. . . .

Then the plaintiff has really sustained but trifling, if any, damage. At the highest the plaintiff valued his equity at \$600; he was to pay \$400; the difference is only \$200. . . .

The plaintiff claims damages for breach of covenant for quiet possession. All the covenants are those of the husband alone. As the plaintiff seeks to remove from the deed the name of the husband as grantor and so as covenantor, and as this action is really not upon the deed but outside of it, and as he has not brought his action or asked any amendment to entitle him to recover against the defendant J. B. Longtin alone, he is not entitled to recover for that alleged breach. The damages for such would not be more than nominal even if the plaintiff were entitled.

The plaintiff should not pay all the costs of this litigation. The defendants' mistake or want of recollection has been in part the cause of it. Upon . . . *Dickerson v. Radcliffe*, 19 P. R. 223, and *Murr v. Squire*, ib. 237, I assume that I have authority to deal with all the costs of this action, and now do so by directing that the plaintiff pay only the costs of the last trial. There will be no costs of the first trial or of the application for a new trial payable by the plaintiff to the defendants. Action dismissed with costs of the last trial only. . . .

The plaintiff is entitled to the promissory note for \$400 now in Court. The defendants are entitled to a declaration that the paper purporting to be a conveyance from the defendant J. B. Longtin . . . registered . . . is of no validity or effect.