

4<sup>1</sup> L.T. Rep. 303, 8 App. Cas. 467, where his Lordship shewed clearly the distinction between bringing an action on a contract and bringing an action on equities arising out of the conduct of the parties. The learned Lord Chancellor supposed the case of a parol contract to sell land completely performed on both sides as to everything but the conveyance, and where the whole of the purchase money had been paid and the purchaser put in possession, and where he had expended money on costly buildings upon the land and had granted leases to tenants. "The contract," said his Lordship, "is not a nullity. There is nothing in the statute to estop any court which may have to exercise jurisdiction in the matter from inquiring into and taking notice of the truth of the facts. All the acts done must be referred to the actual contract, which is the measure and test of their legal and equitable character and consequences." His Lordship then proceeded to point out that if, in such a case as he had supposed, a conveyance were refused and an action for ejectment brought by the vendor against the purchaser, nothing could be done towards ascertaining and adjusting the equitable rights and liabilities of the parties without taking into consideration the contract itself. The matter would have advanced beyond the stage of contract, and the equities which would have arisen out of the stage which it had reached could not be administered unless recourse was had to the contract. There would be a choice, therefore, between undoing what had been done—which might often be impossible, and, even if possible, often manifestly unjust—and completing what had been undone. "It is not arbitrary or unreasonable to hold," continued his Lordship, "that when the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is charged upon the contract only, and not that in which there are equities resulting from *res gestæ* subsequent to and arising out of the contract."

The question is often asked, Does the doctrine of part performance only apply to contracts in respect of land? Why does it not also apply, for instance, to the case of a contract not to be