

something beyond the mere parol evidence. It is the practice of the Courts in England to admit such evidence (a), and there are not wanting decisions of Judges of great eminence, and Courts of the highest authority, to shew that the provisions of the Statute of Frauds shall not be invoked to cover a fraud;—to enable that to be perpetrated which it was their object to avoid: *Lincoln v. Wright* (b), *McCormick v. Grogan* (c), *Heard v. Pilley* (d), *Haigh v. Kay* (e).

1875.

Ross
v.
Scott.

But the decree in this case may be supported, it seems to me, on two grounds, quite consistently with all that has been decided in our Courts: 1st. That an act of the defendant, viz., keeping an account of his expenditure on the property for the purpose of charging the plaintiff with the amount, has been satisfactorily proved; and 2nd. That, by the agreement of the defendant, the plaintiff was induced not to procure the attendance of another agent to act for him: was lulled into security by this agreement, and thereby prevented from securing himself against the loss, not of the bargain merely, but of a security he held upon the land. Judgment*.

That the defendant did keep such an account is established by the evidence of the defendant himself, who says he told the plaintiff before the sale, "I keep an account of all the place costs me." And in January, after the sale, when the plaintiff wanted to trade a horse to pay for getting chopping done on the land, the defendant told him he had hired a man to do the chopping, and said, "I keep a strict account of all it costs me." On the examination on his own behalf he assigns as a reason for this: "I heard that he (Ross) was saying that I purchased for him, and I wanted to get rid of him, and this is why I said I kept an account. I had

(a) Kerr on Fraud and Mistake, 352.

(c) L. R. 4 Eng. and Ir. App. 82, 97.

(e) L. R. 7 Ch. 469.

(b) 4 DeG. & J. 16.

(d) L. R. 4 Chy. 548.