

agreement; as he has permitted the plaintiff to remain in possession, and to make expenditure upon the land for 8 years, before he brought an ejectment. He must have known that the expenditure was made upon the faith of the agreement; and I cannot now permit him to turn round, and say, the plaintiff has been possessing merely as a trespasser; as he must be, if his possession is not to be referred to the agreement."

Furthermore, possession is part-performance both by and against the stranger and the owner. *Wilson v. The West Hartlepool R. Co.*, 2 DeG. J. & S. 475, 485, 46 E.R. 459, 463, Russell, J., refers to *Nunn v. Fabian* (1865), 1 Ch. App. 35, in his Canadian notes to Fry's Specific Performance (5th ed., p. 318f) as probably the case that goes farthest in the direction of recognising acts of part-performance as sufficient to let in parol evidence of the contract. In that case the tenant was in possession under a lease from year to year, and remained in under an oral agreement for a lease for 21 years, at an increased rental, and the part-performance relied on was the payment of the increased rent. The plaintiff was in possession and paid his rent from May, 1862, and the defendants did nothing to disturb his possession until October, 1863. Specific performance was ordered. *Nunn v. Fabian* was followed in Ontario in *Buller v. Church* (1869), 16 Gr. 205. In that case a tenant remained in possession after the termination of his lease under a parol agreement to purchase the land. He ceased to work the farm on shares, and to deliver produce of the farm as he had theretofore done by way of rent; and thenceforth made payments on account of the agreed purchase money partly in cash, partly in work, and partly in farm produce, and thenceforth also dealt with the land as his own; using it and making improvements upon it as an owner would do. He was held entitled to specific performance of the contract for sale. The reasoning in this case would apply equally well to a contract for a lease. The tenant's continued possession, coupled with acts inconsistent with the former tenancy, was held sufficient part-performance to let in parol evidence of a contract of sale. Spragge, V.-C., at p. 210, says:—

"The occupier was in possession in a different character; it was in substance a new possession though without the formality of giving up the one possession and being put into possession in a new character: but, being in possession in a character not referable to his former tenancy, it was open to him, I apprehend, to shew how and in what character he was in possession."

*Township of King v. Beamish* (1916), 30 D.L.R. 116, 36 O.L.R. 325, was a case of an oral agreement between a municipality and the owner of land, by which the latter agreed to lease the land to the former for the term of 8 years, with the right during the term to remove the gravel in the land. The engineer of the municipality entered and removed gravel from the land, continuing to do so until the then requirements of the municipality were satisfied. Rent does not appear from the report to have been paid. A lease was prepared and tendered to the owner for execution but he refused to execute it. The municipality thereupon brought an action for specific performance and succeeded. This case also followed *Wilson v. West Hartlepool R. Co.*, *supra*, and decided that possession taken by a corporation was sufficient part-performance in spite of the fact that there is no assent to the terms of the agreement under the seal of the corporation; at p. 121, 30 D.L.R. and p. 331, 36 D.L.R.,