

latter case, *Wigram, V.-C.*, applied this ruling to a case where the partnership was intended to deal exclusively with land. Lord Lindley in his work on Partnership, 6th ed., p. 89, says that the latter case goes a long way towards repealing the Statute of Frauds, and that it is difficult to reconcile it with sound principle or the more recent decision of *Caddick v. Skidmore*, 2 DeG. & J. 52. This is a strong adverse comment, but yet I am bound to treat the decision as sound, and I did so in *Gray v. Smith*, 43 Ch. D. 208. Whether it is competent for the Court of Appeal now to disturb the ruling above quoted, or whether, being competent, the Court would be willing to do so, is not for me to say; but at any rate I must take the ruling to be established."

In the 7th ed. of Lindley on Partnership, p. 97, it is said, referring to this ruling: "In the absence, however, of any decision of the Court of Appeal to the contrary, the law on the point now under discussion must be taken to have been correctly stated in *Forster v. Hale* and *Dale v. Hamilton*, which have been treated as binding authorities in the most recent cases"—referring to *Gray v. Smith* and *In re De Nicols*.

This paragraph does not appear in the earlier edition, and has been added since these cases were decided.

My conclusion is, that, following these cases, we must hold that the Statute of Frauds is not an answer to the appellant's claim.

I would, therefore, reverse the judgment appealed from, so far as it dismisses the action against the respondents Hill and Paget, and substitute for it a judgment declaring that the appellant is entitled to one-third of the proceeds of sale of the leases to the respondents Waines and Root, and for an account (if the parties do not agree as to the amount), and to judgment for the one-third with costs, and dismiss the appeal against the judgment in favour of the respondents Waines and Root; and I would not give costs of the appeal to any of the parties.

TEETZEL, J., agreed with the conclusion of the Chief Justice. He made some references to the evidence, and concluded his written opinion thus:—

If we are convinced, as we are, that the trial Judge has erred in failing to give due effect to strongly preponderating evidence against the respondents Paget and Hill, or that he has misapprehended the effect of such evidence, it is our duty to reverse his findings and direct the proper judgment to be entered. In this