Parol Agreements.

There is really no difference in essence between verbal and written agreements. In fact, as is well understood, the expression "parol" is applied indiscriminately to both.

The suggestion of a different view was thrown out by Lord Mansfield in the early case of *Phillans* v. *Van Mierop* (1765, 3 Burr. 1664 and Finch Sel. Ca. 269), who expressed the view that "there is no reason why agreements in writing, at all events in commercial affairs, should not be good without any consideration. A *nudum pactum* does not exist in the usage and law of merchants.

"I take it that the ancient notion about the want of consideration was for the sake of evidence only . . . in commercial cases amongst merchants the want of consideration is not an objection."

Of this dictum Sir Frederick Pollock says that its "anomalous character was rightly seen at the time and it has never been followed."

In 1778 it was distinctly contradicted by the opinion of the Judges delivered to the House of Lords in *Raun* v. *Hughes* (1778), 7 T.R. 350, as follows: "all contracts are by the laws of England distinguished into agreements by specialty, and agreements by parol; nor is there any such third class, as some of the counsel have endeavoured to maintain, as contracts in writing. Langdell ingeniously argued that contracts governed by the law merchants need on principle no consideration, in short, that a negotiable instrument is a specialty.

It might have been better so. In this country one can only say *dis aliter visum*.

Effect of Divisional Court Judgment.

The result is that the verbal agreement to sell land accomplishes its object in spite of the statute, as the parties are compelled to carry it out as the only means of saving themselves from heavy loss. In point of fact the unfortunate defendant in the case