

RECENT ENGLISH DECISIONS.

defendant were owners of adjoining houses, and being about to rebuild, entered into a verbal agreement that the plaintiff should pull down a party wall and rebuild it lower and thinner, and that each party should be at liberty to make a lean-to skylight, with the lower end resting on the party wall. The plaintiff rebuilt the party wall, and erected a lean-to skylight on his side of it, as agreed; the defendant also erected a skylight on his side, but instead of a lean-to, so shaped it, as to obstruct the access of light to the plaintiff's premises more than the lean-to would have done. The action was brought to restrain the defendant from permitting his skylight to remain in its present position, or from erecting any structure contrary to the alleged agreement. The plaintiff relied on his performance of the agreement, as entitling him to specific performance of the agreement by the defendant. Counsel for the defendant argued that the doctrine of part performance was confined to sales of interests in land, and that what was claimed by the plaintiff was a mere easement, which was not an interest in land; but Kay, J., after reviewing the authorities, at p. 697, deduces from them the following propositions:

(1) The doctrine of part performance of a parol agreement which enables proof of it to be given, notwithstanding the Statute of Frauds, though principally applied in the case of contracts for the sale or purchase of land, or for the acquisition of an interest in land, has not been confined to those cases. (2) Probably it would be more accurate to say it applies to all cases in which a Court of Equity would entertain a suit for specific performance, if the alleged contract had been in writing. (3) The most obvious case of part performance is when the defendant is in possession of land of the plaintiff under the parol agreement. (4) The reason for the rule is that where the defendant has stood by, and allowed the plaintiff to fulfil his part of the contract, it would be fraudulent to set up the statute. (5) But this reason applies whenever the defendant has obtained, and is in possession of, some substantial advantage under a parol agreement, which, if in writing, would be such as the court would direct to be specifically performed. (6) The doctrine applies to a parol agreement for an easement, though no interest in land is intended to be acquired.

Applying these principles to the case before him he granted the injunction as prayed.

TRADE MARK—INFRINGEMENT OF TRADE MARK—ACTIO PERSONALIS MORITUR CUM PERSONA.

The simple point determined by Chitty, J., in *Oakey v. Dalton*, 35 Chy. D. 700, was, that an action to restrain the infringement of a regis-

tered trade mark with the usual claim for an account of profits and damages is not within the rule *actio personalis moritur cum persona*, but being brought in respect of an injury to the property of the owner of the mark, may be continued by his executors after his death.

DISCOVERY—PRODUCTION OF DOCUMENTS—FRAUD—TRUSTEE.

In *re Postlethwaite*, *Postlethwaite v. Rickman*, 35 Chy. D. 722, was an application to compel production for the purpose of discovery. The action was brought for an account of profits in respect of a purchase of trust property, the plaintiff alleging that the sale was secretly made for the benefit of R., one of the trustees, with the connivance of T., another trustee who was a solicitor. The representatives of R. claimed privilege from production for letters from T. to R., and for T.'s bill of costs, on the ground that the communications were made by T. acting as solicitor to R. in his private capacity. But North, J., ordered the documents to be produced because the communication passed between two trustees, and because the solicitor and his client were charged with fraud. The latter ground is one which appears to us to be open to abuse. There may be cases where a plaintiff, by stating his case honestly, according to the facts, would not be entitled to the production of documents in the defendant's possession, but by dishonestly stating a case of alleged fraud, he may, according to the cases, procure production of documents he would otherwise not be entitled to, and having secured the benefit of the production, he may amend his statement of claim and strike out the fictitious allegations of fraud. One would think some *prima facie* proof of the existence of the alleged fraud should be required to be given, before documents, otherwise privileged, should be ordered to be produced on that ground.

WILL—BEQUEST—FUTURE ILLEGITIMATE CHILDREN, BEQUEST TO.

In *re Hastie's Trusts*, 35 Chy. D. 728, Stirling, J., discusses the law relating to bequests in favour of illegitimate children. A testator who had been for some years illicitly cohabiting with one Martha Eliza Macdaniell, by whom he had four illegitimate children, made his will whereby he gave a trust fund "in trust for my four natural children by M. E. M., viz.