

He then proceeds: "But since the various amendments which have taken place in the law with regard to equitable doctrines, it has never been decided, so far as I am aware, that the equitable doctrine of part performance can be made use of for the purpose of obtaining damages on a contract at law. I considered the question carefully in *Re Northumberland Avenue Hotel Company*, and that went to the Court of Appeal, 33 Ch. D. 16, 18; 2 T. L. R. 210. There it was impossible to give specific performance because the subject-matter of the contract had come to an end. The Metropolitan Board of Works had entered, and the claimant (it was in a winding-up) could not claim specific performance. It was in that case argued strenuously on behalf of the claimant, that he was still entitled to obtain damages, and I held that he was not, although there had been part performance by entry, and my decision was, as I understand, affirmed by the Court of Appeal. The result is that I adhere to that, and I point out that in this case, when the writ was issued, it was impossible to give specific performance. It was suggested that after Lord Cairns's Act, the Court of Equity could give damages in lieu of specific performance. Yes, but it must be in a case where specific performance could had been given. It was a substitute for specific performance."

A reference to the facts in the *Lavery Case* shews that at the time the action was tried, the time for specific performance had passed, and it was there held that as it would have been impossible to grant specific performance, the plaintiff could not recover damages in lieu thereof.

In *Re Northumberland Avenue Hotel Company*, referred to in the last citation the case was affirmed by the Court of Appeal, but not upon the ground that damages could not be given in lieu of specific performance. That question does not seem to have been referred to either in the argument or in any of the judgments in the Court of Appeal. It is true that Chitty, J., as a second ground in his judgment states, that if there had been an agreement on which specific performance could have been originally decreed on the ground of part performance, there would not be any jurisdiction to give damages after specific performance had become impossible, but this was not necessary for the decision of the case and is in no way confirmed by the Court of Appeal.