

mistake, even if that would suffice, to enable the Court to avoid the effect of the statute; nor part performance to satisfy it in the absence of a sufficient memorandum.

With much regret, because of the dishonesty of defendant's conduct, which called forth such deservedly severe condemnation from the trial Judge, I find myself compelled to hold, for the reasons above indicated, that this action cannot succeed. In allowing defendant's appeal, however, in my opinion we should mark our abhorrence of the conduct of herself and of those by whom she has been advised, by withholding all costs from her.

The appeal will be allowed, therefore, without costs, and the action dismissed likewise without costs. The appellant must, however, comply with the terms which the trial Judge would, had he given effect to her plea of the statute, no doubt have imposed as a condition of her being allowed to amend at the trial by then setting up that plea. She will be ordered to pay to plaintiff his costs of this action from delivery of defence down to the opening of the trial.

MEREDITH, C.J.:—I agree.

BRITTON, J.:—I agree in the result—that the appeal should be allowed without costs and the action dismissed without costs.