

In that case the plaintiffs had acquired a building estate which they laid out, and on which they erected houses. They sold the houses when erected. The defendant desired a house and chose its position. The plans of the originally intended house on the site chosen by her required a variation in order to accord with her wishes. The altered plans were criticized, altered, and approved by the defendant, and the price was fixed accordingly. The plaintiffs submitted the new plans to the local authority, who passed them. A deposit was paid and the house was erected. While the house was in the course of erection the defendant visited it from time to time. She called attention to the fact that in building there was some deviation being made from the plans as finally settled. This required some alteration in the half-finished work—particularly the raising of the joists of a floor, which had already been fixed. On these facts Mr. Justice Kekewich decided that there had been a sufficient act of part performance to take the case out of the Statute of Frauds, and his Lordship gave the usual judgment for specific performance.

The judgment of Mr. Justice Kekewich in the last-mentioned case is particularly instructive, as his Lordship traced step by step the various stages of the case, stating after each successive act or event the reason why that act or event was not a sufficient act of part performance. It was not wholly the alterations in the half-finished work made at the instance of the defendant that constituted, in his Lordship's opinion, the necessary part performance, but rather the fact that she was not regarded as a mere trespasser when inspecting the building. "When a lady goes again and again," said his Lordship, "and insists on having alterations with a right—whether legal or moral does not matter—to be there, then it seems to me that I have an unequivocal act, and that she was not a mere trespasser, but was interested in the matter on the footing of a legal contract."

In the recent case of *Daniels v. Trefusis*, sup., mentioned in the opening lines of this article, the facts were both peculiar and involved. Mr. Justice Sargant, however, expressed the view that, in the facts of the case, the giving of notice by the vendor