

KING'S BENCH.

Cameron, J.]

VANDERWOORT v. HALL.

[Jan. 27.

Specific performance—Delivery of deed in escrow—Part performance—Statute of Frauds.

Action for specific performance of a contract for sale of land to the plaintiff.

Plaintiff and defendant entered into a verbal agreement for the purchase from the defendant of a house and lot for \$2 925, giving therefor as part of the consideration an assignment of an agreement to purchase certain farming lands and the balance in cash "by raising a loan on the property purchased" from the defendant. It was part of the verbal agreement that the farm lands were to be leased to one Bishop, and that Bishop should sign a lease from the defendant for them. A statutory conveyance of the house and lot and an assignment of the agreement for the purchase of the farm lands were drawn up and executed and left with the defendant's solicitors. At the same time, under instructions from the plaintiff, a lease of the farm lands was prepared for signature by Bishop. Bishop afterwards declined to enter into the proposed lease. It also appeared that the signature of Empey the vendor of the farm lands, was necessary as consenting to the assignment by the plaintiff, but that, prior to the trial, Empey had served notice of cancellation of the agreement on both parties to the action, and that the agreement had been thereby effectually cancelled and that the title had reverted to Empey.

Held, 1. The plaintiff's failure to secure Bishop as a tenant barred his right to specific performance, as did also the fact that the plaintiff had, at the time of the trial, no further interest in the farm lands.

2. The receipt by the plaintiff of a payment of rent from the tenant of the house without the consent or acquiescence of the defendant was not such a part performance of the contract as would take the case out of the Statute of Frauds.

Semble, the documents executed and left in escrow with the defendant's solicitor would not be evidence of the verbal agreement sufficient to take it out of the statute: *McLaughlin v. Mayhew*, 6 Q.L.R. per OSLER, J.L., at p. 177.

Philip and Kilgour, for plaintiff. *Adolph and McKay*, for defendant.