

*land Savings Bank vs. Schroeder*, 8 G. & J., 93; *Moale vs. Buchanan*, 11 G. & J., 314.

Without meaning to express any opinion upon the character and weight of the evidence of the acts of part performance, relied upon by the plaintiffs, to take this case out of the operation of the statute of frauds; assuming, that they had by the frame of their bill, entitled themselves to introduce such evidence, I am clearly of opinion, that the evidence is inadmissible, as not being within any issue presented by the bill; or indeed by the pleadings on either side. No act of part performance has been alleged, and none can be proved, and, therefore, it follows that the complainants cannot have the relief they seek by their bill.

The agreement also, in this case, might perhaps be regarded as deficient, in that degree of certainty and precision which would be required to enable the court to decree its specific execution.

When acts of part performance are relied upon to take a parol agreement for the sale of lands, when denied by the answer, out of the operation of the statute of frauds, full and satisfactory evidence must be offered of the *terms of the agreement*, and of the performance of it, on the part of the complainant. *Hall vs. Hall*, 1 Gill, 383.

A court of equity will not defeat the salutary intent of the statute of frauds, and it will not enforce a parol contract for conveyance of land, even where the possession thereof, has been delivered, where it does not clearly appear what the contract was. *Wingate vs. Dail*, 2 Harr. & Johns., 76.

In this case we have seen, that by the contract of July, 1844, the *fee* in the land therein described, was not to be conveyed to the complainants. On the contrary, the agreement in terms provides, that when the ore should be taken out of the land, the land itself was to revert to the vendor, Miss Owings.

In the subsequent parol agreement of 1845, and which was for the purchase of six acres, the two acres comprehended in the first purchase were embraced; and it may not, perhaps, be regarded as a very violent presumption, to suppose that the