

granted. The defendant denied the making of the agreement charged in the bill ; but admitted the assignment of the single bill, and the release of the sums which he owed to Simperts. He denied, however, that the assignment and release were for the purpose alleged in the bill. Leave was afterwards obtained by the complainants to take testimony, which having been filed, the case was argued before the Chancellor, on the motion to dissolve the injunction, who delivered his opinion at this term.

As to the effect of the testimony, the Chancellor said :]

THE CHANCELLOR :

It is very clear, I think, from the evidence in this case, taken in conformity with the act of assembly, that at the time stated in the bill, an agreement was made between the late Richard L. Simperts and the defendant, Wilson, for the sale by the latter to the former, of fifty acres of land ; that a part of the money was paid by Simperts in his lifetime, and, that he was in possession of the land, as purchaser, to the period of his death, in the year 1846. Whether the contract was in writing, as the bill alleges, the complainants were informed, is not quite clear ; but, as part performance is alleged and proved, it may not be very material ; as part performance would take the case out of the statute of frauds. *Moale et al. vs. Buchanan et al.*, *Gill & Johns.*, 314.

It is said, however, that as the bill in this case alleges that the contract was in writing, it is not competent for the complainants to prove a parol agreement, and ask for its specific execution on the ground of part performance. The allegation, however, is very far from being explicit and positive. It is, that "the agreement was in writing as the complainants have been informed." But this, it is thought, is not the stage at which it would be proper to decide on the admissibility of the proof, upon the ground that the allegations of the bill are not so framed as to let it in ; and the court would certainly not be disposed to adopt a very strict rule in a case like the present,