

BROWN v. DREW, *Adm'r.*

Payment of the price agreed upon, in a parol contract for the sale of land, is not a sufficient reason to authorize a decree for specific performance.

67a	569
69	81
67	569
Case 1	
74	73

BILL IN EQUITY, for specific performance. Facts agreed. The plaintiff made a verbal agreement with the intestate to loan him \$150, for which the latter was to give him a note secured by a mortgage of certain land. In pursuance of the agreement he delivered the money to the intestate. The note and mortgage were prepared, but their execution was prevented by the sickness of the intestate, who died in a few days, leaving an estate not sufficient for the payment of his debts.

James L. Wilson, for the plaintiff.

Asa W. Drew, for the defendant.

*Per Curiam.** "No action shall be maintained upon a contract for the sale of land, unless the agreement upon which it is brought, or some memorandum thereof, is in writing, and signed by the party to be charged, or by some person by him thereto authorized by writing." P. S., c. 215, s. 1. Part performance of a contract for the sale of land, as when the purchaser takes possession of the land or makes substantial improvements upon it before the delivery of the deed, is held in equity sufficient to relieve him from the operation of the statute; but merely the payment of the agreed price does not have that effect. *Ham v. Goodrich*, 33 N. H. 32, 36-39; *Kidder v. Barr*, 35 N. H. 235, 255; *Purcell v. Mines*, 4 Wall. 513, 518; 3 Pom. Eq. Jur., s. 1409, *note*.

Bill dismissed.

CARPENTER, J., did not sit: the others concurred.

FISHER v. CARPENTER & a.

FISHER v. CARPENTER.

An agreement of adjacent owners determining their boundary line may be inferred from the maintenance of fences, occupation, and acquiescence. The statute giving the court discretion as to the allowance of costs (P. S., c. 229, s. 3) is applicable to an action of trespass *qu. cl.*, in which the title to real estate is in question.

A court of equity will not enjoin against an ordinary trespass, for which there is a full and adequate remedy at law.

* See foot-note on page 80.