so far as it was inconsistent with this declaration, and to remit to the Court below to proceed accordingly. June 6, 1814.

MUTUAL CONTRACTS BETWEEN HUSBAND AND WIFE.

Agent for Appellant, CHALMER.
Agent for Respondent, MUNDELL.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

WHEELER—*Appellant.*
D'ESTERRE—*Respondent.*

PAROLE agreement in 1732, for a lease for three lives not then named, nor any stipulation as to who should name them, at a rent of 1*l.* 15*s.* per acre. Tenant enters, and considerable improvements are made, and, in 1784, or 1785, the rent is reduced to 1*l.* 10*s.* per acre. Tenant names the lives in 1786 or 1787, one of them not in existence in 1782, and evidence that the landlord approved of them, but none of the improvements made subsequent to that declaration. Bill in 1796 for specific performance of agreement of 1782. Agreement denied; but decree by *Lord Clare*, in 1798, for execution of a lease for the lives named in 1786, at a rent of 1*l.* 10*s.* per acre. This decree reversed by *Lord Redesdale* as to the execution, but—it being doubted whether the fact of substantial improvements by the tenant was so clearly established as to take the case out of 7 Will. 3, cap. 12, (Irish statute of frauds)—farther inquiries ordered as to the improvements, and report that they had been made with the landlord's money. Exceptions to this report over-ruled, and decree, in 1806, by *Lord Chancellor Ponsonby*, dismissing the bill, and this decree affirmed on appeal, the *Lord Chancellor* being of opinion (*Lord Redesdale* concurring) that the bill ought to have been dismissed in the first instance, on the grounds

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that no lives had been named in 1782, nor any stipulation then made as to who should name them; that one of the lives named in 1786 was not in existence in 1782,—an agreement for a lease for lives being to be understood as referring to lives in existence at the time; that though the landlord approved of the lives named in 1786, no antecedent improvements could give effect to such a declaration; and that, if they could, the agreement must be understood as one in 1786, different from that in 1782, on which latter alone the bill was founded.

Bill, October, 1796.

BILL by Wheeler, in the Irish Court of Chancery, October, 1796, for specific performance; alleging an agreement between him and D'Esterre,

Parole agreement, 1782.

in 1782, for a lease to the former of 188 acres of the lands of Rosmanaher and Deer Park, in the county of Clare, for three lives, or 31 years; that the lives were nominated by Wheeler in 1786, being himself, his wife, and William Wheeler, his son; that leases were prepared accordingly by A. H. D'Esterre, Respondent's brother, an attorney; that Respondent agreed to execute the leases, but postponed the execution till relieved from a security in which he was engaged for Appellant; that Appellant, on the faith of the agreement, laid out considerable sums in improving the lands; and that,

Alleged improvements.

with the knowledge of Respondent, he had, upon the faith of the execution of this lease for lives, voted for a friend of Respondent's at the election for representative in Parliament for the county of Clare in 1783. And the bill prayed that the Respondent

Prayer.

might be decreed to perfect the leases prepared as aforesaid, or such other lease as the Court might think the Appellant entitled to; and that an in-

junction might issue to restrain proceedings upon a judgment in ejectment obtained by Respondent against Appellant. Respondent's answer denied any promise or agreement to let Appellant have the lands in any other manner than as tenant at will, with the hope of a lease held out in case Respondent approved of his conduct, but of what quantity of land, or for what term, was to depend entirely on Respondent; and it also denied that Appellant had made any lasting or valuable improvements on the lands; and stated, that the voting at the election was no evidence of title, as others voted who were not even in possession, and that no declaration or oath was then required of the Appellant as to his having a freehold.

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Witnesses were examined, and it appeared that the rent originally settled in 1782 was 1*l.* 15*s.* per acre, which in 1785 the Respondent agreed to reduce to 1*l.* 10*s.* per acre; and that in the leases prepared by Respondent's brother, blanks were left for the quantity of land, and the term to be granted.

It also appeared, that in 1787 the Respondent gave 10 or 12 acres of the land which had been in Appellant's possession to one Dalton, who rented some adjoining grounds of Respondent's, without any objection made by Appellant. Some evidence, however, was given on the part of the Appellant, of the advertising of the lands in 1781 to be let for three lives, or 31 years, and of declarations by the Respondent, that he had agreed or promised to give a lease to the Appellant of the lands in question for three lives; that the Appellant applied for a lease in 1786 or 1787, and that he

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at the Respondent's request, then nominated the lives,—his own, his wife's, and his son's life; that Respondent afterwards agreed to execute the lease when a map of the lands should be prepared, and that—the Appellant's first son being a bad life—the Respondent agreed to substitute the life of the second son; that the Appellant voted at the election in 1783, as above stated, and in Respondent's presence; and also that he made several improvements on the lands.

Lord Clare's decree, March, 1798.

The cause being heard before *Lord Clare*, in March, 1798, his Lordship decreed a specific performance of the agreement, by the execution of a lease for the lives of the Appellant, his wife, and son, at the rent of 1*l.* 10*s.* per acre, on payment of the arrears of rent; and a reference was made to the Master, to take the accounts between the parties; and—the Respondent having before obtained possession under the ejectment—an injunction was awarded to put Appellant in possession. The Master having reported, an issue was directed to enquire what Respondent might have made of the lands during the time he was in possession between 1796 and 1798, and what sums he had laid out in repairs on the banks adjoining the river Shannon. It having been found and certified, that he might have made 600*l.* of the lands, and had laid out 85*l.* in repairs, the cause was again heard; and, after a farther reference and report on the matters of account, an order was made in December, 1801, that the Master should settle the draft of a lease pursuant to the decree of 1798.

The cause was afterwards re-heard before *Lord*

Redesdale, who reversed the decrees of *Lord Clare*, and ordered a fresh reference to enquire what substantial improvements had been made on the lands by the Appellant between March, 1782, and March, 1785, and from 1785 to 1793, &c. The Master then reported, that no substantial and lasting improvements had been made by the Appellant at his expense during the periods mentioned, but that considerable sums had been expended by the Respondent in such improvements,—the Appellant acting in the capacity of his steward; that the leases in the bill named were prepared at the instance of the Appellant, with blanks for the denomination and quantity of the lands, and the terms of years, &c. Exceptions by the Appellant to this report were over-ruled; and, in 1806, it was decreed by *Lord Chancellor Ponsonby*, that the report should be confirmed, and the bill dismissed without costs; and that a writ of restitution should issue to restore the possession to the Respondent. From these decrees of the 19th March, 1803, and 8th May, 1806, the Appellant lodged his appeal.

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Decree, 1803, by Lord Redesdale, reversing Lord Clare's decree as to the execution, but ordering farther inquiries.

Report.—No lasting improvements by Appellant.

1806. Report confirmed, and bill dismissed.

Hart and *Barber* for Appellant. (*Romilly* and ——— for Respondent—not heard.)

Lord Eldon (Chancellor.) *Lord Clare*, in 1798, decreed the execution of a lease for the lives of Wheeler, his wife, and son. I wish to know from you, (*Hart*,) whether, at the time of this agreement, in 1782, Wheeler had a wife or son? Where did *Lord Clare* find these lives? This was an alleged agreement for a lease for three lives, but they must

Lives stated in Lord Clare's decree not named, nor

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all of them in existence at the time of the agreement.

have been lives named and existing at the time. An agreement for a lease for three lives to be named and in existence five or six years after is a different thing.

Lord Redesdale. The decree of 1803 reversed the former decree as to the specific execution, but directed inquiries as to the expenditure. But suppose you could succeed on the exceptions to the last report, what is the agreement to be executed?

Hart. He admitted that at the time no three lives were named; but there was evidence that the Respondent recognized the three lives afterwards named,—the Appellant, his wife, and eldest son; and that, when the eldest son's life was despaired of, he said he would admit the life of the second son.

Lord Eldon. Would any antecedent expenditure give effect to such a declaration? Suppose you and I were to agree for a lease for three lives, what is the rule by which the Court is to say that one of us shall name the lives, and not the other? I strongly think I should have dismissed the bill in the first instance.

Hart. If the parties thought it immaterial to name the lives at the time, and the tenant entered, and, in confidence of the execution of the agreement, expended considerable sums of money upon the lands, and then the tenant named the lives, and the other recognized them,——

Lord Eldon. Is there any allegation in the bill, that the agreement was for the lives mentioned in the decree, (1798,) or for any three lives that the Appellant should name?

Hart. No;—but their Lordships would deal

with the case according to the rules established in the Court below, and not according to what, under better directions, they might have been. June 24, 1814.

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Lord Eldon. But if different principles are to be applied to English and Irish cases, we must know, and the world must know, what these principles are. How would you argue in the Court of Chancery, in the case of an agreement for three lives not specified, nor settled by whom to be specified? Would the Court name the lives?

Hart. No;—but if the names were afterwards pointed out and agreed upon by the parties——

Lord Eldon. Could the Court execute, unless it were alleged in the bill that they had agreed as to the names. My opinion at present is, that if three lives were to be named by the tenant, he must name three lives that were in existence at the time the agreement was made. But there was here even no allegation in the bill, that the defect had been supplied by naming these indviduals.

In the case of an agreement for a lease for lives to be named by the tenant, he must name lives in existence at the period of the agreement.

Lord Redesdale. In looking at my notes, I find that the Plaintiff had, in 1782, been let into possession of considerably more than 188 acres, and a number of acres had been taken from him. It was farther objected, that the evidence relative to the election could not affect the question as to the lives. Plaintiff was not married at the time of the agreement, and his son of course could not then have been born.

Lord Eldon. He had not even a *filius naturalis*, (*vide* proceedings on the claim to the Borthwick Peerage.)

Lord Redesdale. One of the lives afterwards

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named was not therefore in existence in 1782, and the only agreement which could be executed was one made subsequent to 1782. The bill then was for performance of an agreement made in 1782; the decree (1798) was for the performance of another agreement, made in 1786 or 1787. I was weighed down by the authority of *Lord Clare*, and therefore did not go farther. Whether I did right in that I very much doubt. Then was the agreement in 1782 such an one as could be executed?

On bill for one agreement, performance decreed by Lord Clare of another.

Hart. Suppose it had been in writing, though no lives were named, yet if it appeared that the tenant entered into possession, and improved the lands in the confidence that the agreement would be performed, and a conversation afterwards took place between the parties, in which the landlord recognized certain lives named by the tenant as the names to be in the agreement, the Court might have connected this with the original contract, and decreed performance. (*Allen v. Bower*, C. C. 3 Bro. 149.)

Lord Eldon. The bill does not allege any expenditure by the tenant after 1786. My opinion is, that the bill ought to have been dismissed in the first instance.

The bill ought to have been dismissed in the first instance.

Lord Redesdale concurred. He had been weighed down by the authority of *Lord Clare;* but on looking at his notes, he found the objections to be without end. In the agreement of 1782, the rent was 1*l.* 15*s.* per acre; but the decree of *Lord Clare* was for a lease at the rent of 1*l.* 10*s.* per acre, an abatement much beyond any improvements that had been made by the tenant; and as to the proof of these improvements—the Appellant having acted

as agent for the Respondent—the accounts were so mixed, that it was impossible to distinguish what improvements had been made with the money of the Respondent, and what with the money of the Appellant; and that was the circumstance which induced him to send the matter to a farther inquiry: but he thought the bill ought to have been dismissed originally. The prayer of the bill, he saw, was, that the leases prepared by D'Esterre, Respondent's brother, might be perfected; and in these leases blanks had been left for the quantity of lands and the lives.

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Decree of the Court below *affirmed*. Judgment.

Agent for Appellant, J. PALMER.
Agent for Respondent, TYNEDALE.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

HALL—*Appellant*.
BROWN—*Respondent*.

THE stipulations in a charter-party may be varied by subsequent instructions, which may amount to a new contract *pro tanto;* and an insurance of the freight upon the new voyage, though different from that described in the charter-party, may be good. Thus, where a British vessel was chartered for a voyage from Odessa to Rotterdam,—war having in the mean time broken out between Great Britain and Holland,—the Master was instructed by the freighter's agents at Odessa, in case he could not get to Rotterdam, to proceed to Hamburgh or Bremen; but to enter at London

July 4, 1814. INSURANCE.