

EVIDENCE—*Continued.*

- to be essential to the ascertainment of truth, should be broken down or disregarded. *Ib.*
8. The rules of evidence in regard to explaining, or varying, or contradicting written evidence, are the same in courts of equity as in courts of law. *Elysville Manufacturing Co. vs. Okisko Co.*, 392.
  9. It was urged, that the defendants should be required to offer proof in support of some statements of the answer, though responsive to the bill; because such proof was within their reach, whilst it was inaccessible to the complainants. HELD—That the rule that the answer when responsive to the averments of the bill, shall be taken as true, unless discredited by two witnesses, or one witness with pregnant circumstances, is not subject to the modification which the introduction of such a principle would involve. *Thompson vs. Diffenderfer*, 489.
  10. Evidence of declarations, made by a husband during coverture, is not admissible against creditors of the husband to establish a secret parol agreement between him and the wife, in reference to property standing in the husband's name during his lifetime. *Brooks vs. Dent*, 523.
  11. Parol evidence is admissible to show, that an absolute conveyance was intended as a mortgage, and that the defeasance was omitted or destroyed by fraud or mistake. *Bank of Westminster vs. Whyte*, 536.
  12. But unless accident, fraud or mistake can be shown, or in cases of trusts, parol evidence cannot, either at law or in equity, be admitted to contradict, add to, or vary the terms of a will, deed or other instrument. *Ib.*
  13. It is competent to show the intention of the wife to charge her separate estate by parol evidence. *Conn vs. Conn*, 212.

See AGENT, 1.

SALES BY TRUSTEES, 11.

PRACTICE IN CHANCERY, 26, 34, 35.

## EXCEPTIONS TO ANSWER.

1. Exceptions to an answer for insufficiency can only be sustained where some material allegation, charge or interrogatory of the bill is not fully answered. *West vs. Williams*, 358.
2. The court must see by referring to the bill alone, in connection with the exceptions, that the precise matters as to which a further answer is sought, are stated in the bill, or that such an answer is called for by the interrogatories. *Ib.*
3. Exceptions to an answer, upon the ground that the defendant did not give a detailed account of the management of a trust fund, which came to his hands as agent, were overruled, because the bill only called upon him for an account of the business of the trust and not for an account of the business of the trust and agency. *Ib.*

## EXECUTED AGREEMENTS, CONTRACTS AND CONVEYANCES.

See CONVEYANCES, VACATING OF, 1.

CORPORATIONS, 5.

## EXECUTORS AND ADMINISTRATORS.

See DOWER, 4.