

in a written assent to its immediate ratification, and thereupon the land was conveyed to the defendant. The complainant afterwards filed a bill **515** for relief against *these proceedings, on the ground that the transaction was fraudulent, it having been the secret parol agreement between the parties that the defendant should get title only to one-half of the property. The Statute of Frauds was relied on, but the lower Court gave relief. On appeal, the decree was reversed by a majority of the Court, the Chief Justice holding, that the complainant had by his proceeding united with the defendant in a fraud upon the Court, and Mason J. saying, that on failure of proof of fraud upon the complainant in inducing him to sign the application for an immediate ratification of the sale, the complainant could not set up, in opposition to a plea of the Statute of Frauds, a secret understanding that the defendant was only to have part of the lands; that where the contract has not its inception in the fraud of the party against whom relief is sought, but he is merely making a fraudulent use of the Statute to keep an advantage obtained through the reliance of the other party upon his good faith, no relief can be granted. So in Rowland v. Crawford, 7 H. & J. 52, a parol agreement of a judgment creditor, buying in under an execution the lands of the debtor (who was entitled to a patent therefor) and obtaining a patent in his own name, to relinquish his right to them on payment of his debt was held to be a gratuitous promise in the first place, and, in the second place, not within any of those classes of cases excepted from the operation of the Statute;² see, however, Dorsey v. Clarke, 4 H. & J. 551, as to cases where there is part execution by delivery of possession; and it may be otherwise if a trust can be set up, or the conscience of the promisor taking a conveyance to himself be affected by the circumstances, Davis v. Walsh, 2 H. & J. 329.

Part performance.—But equity will relieve in some cases of fraud even against the words of the Statute. “Why does equity decree the specific execution of a parol agreement on the ground of part performance,³ and

² An oral agreement by vendee with vendor in an absolute deed to sell the land conveyed and credit any profits arising from such sale on a certain indebtedness to the former, is void under the Statute. To enforce it would be to set up a conventional trust on the foundation of a parol agreement. Kidd v. Carson, 33 Md. 37.

³ **Part performance.**—The doctrine of part performance is peculiar to chancery; it cannot at law take a case out of the Statute. Hamilton v. Thirston, 93 Md. 219. When an act of part performance is relied on to take a case out of the Statute, such an act must of itself furnish evidence of the identity of the contract. It is not enough that it is evidence of some contract. It must relate to and be unequivocal evidence of the particular contract charged in the bill. The contract must be clear and definite and the act done should be equally clear and definite and solely with a view to the performance of the particular agreement. It must be of a substantial nature and such that the party would suffer an injury amounting to a *fraud* by the refusal to execute the agreement. Semmes v. Worthington, 38 Md. 298; Billingslea v. Ward, 33 Md. 48; Reese v. Reese, 41 Md. 554; Hopkins v. Roberts, 54 Md. 317; Ridgway v. Ridgway, 69 Md. 242; Maddison v. Alderson, 8 App. cas. 467.