of giving directions for conveyances and going to take a view of the property are not sufficient part performance, Clerk v. Wright, 1 Atk. 12. In Hamilton v. Jones *supra*, a tenant for life had permitted a party to cut a ditch through her land to a mill. After her death the remainderman demanded compensation for the ditch, and a parol agreement was entered into for its purchase, the amount of the purchase money to be ascertained by arbitration. On the refusal of the remainderman to complete the bargain, and upon his insisting on the Statute, it was held that there was no acquiescence by him, under the circumstances, in the continuance of the ditch, and that an award was no part performance. The possession too must be notorious and exclusive, Frostburg Co. v. Thistle, 20 Md. 186. Generally, the bill must charge such acts of part performance, not merely as introductory or ancillary to the agreement, but as a part execution of its substance and such as would not have been done unless on account of the agreement,—acts unequivocally referring to and resulting from the agreement and such as the party would suffer an injury from amounting to fraud by a refusal to execute the agreement, *per* Marshall C. J. in Caldwell v. Carrington, 9 Peters, 86, approved in Hall v. Hall *supra*, and Small v. Owings, 1 Md. Ch. Dec. 303. And it has been often determined, many of the cases being collected in the argument and judgment in Smith v. Crandall *supra*, that the plaintiff must make out by clear, full and satisfactory proof the existence of a positive, unqualified contract in terms as laid in the Bill, and its performance by him, and those acts of part performance must be of the identical contract set up; it is not enough that the acts are evidence of some agreement; they must be evidence of the very agreement, and this rule applies as well to agreements in consideration of marriage as any other agreements, Gough v. Crane *supra*. It is too in these, as in all other cases where specific performance of a contract is sought, within the discretion of the Court to grant or refuse it, and the same principles which govern in those other cases as to the agreement, that it be fair, reasonable, *bona fide*, mutual, and certain in all its parts, and as to the propriety of its enforcement under all the circumstances, even though established, apply equally here. And so in Waters v. Howard, 8 Gill, 262, it was said, that where a surviving husband of a wife dying without issue suffered no prejudice in what had been done towards a promised provision for his wife, a specific execution would not be decreed in his favour. And *Wingate v. Dail, 2 H. & J. **518** 76, is an authority, that if such a parol contract in part performed be rescinded by parol, equity will not enforce it.

Not necessary to plead Statute at law or in equity.—It was at one time held that where the answer confessed the parol agreement but insisted on the Statute, it was no bar; but the contrary is now fully established, Hamilton v. Jones *supra;* an answer, admitting a verbal agreement stated in the bill but insisting on the Statute, must be read as if it were an answer denying the agreement *in toto*, for the Court will not look at that portion of the answer which admits the agreement where the defendant insists on the Statute, Jackson v. Oglander, 2 Hem. & M. 465; see Winn & Ross v. Albert, 2 Md. Ch. Dec. 169. And consequently, if the answer denies the existence of any parol agreement and insists upon the benefit