of the Statute, the case cannot be made out by parol proof and the bar is complete; but there is an exception resulting from part performance, Hall v. Hall *supra*.[12] Nevertheless, the defendant may be compelled to answer all the material allegations of the bill, whether he insists on the benefit of the Statute of Frauds or not (*i. e.* where the bill alleges part performance, for otherwise a *plea* of the Statute would clearly dispense with an answer), at least such seems the better doctrine; but if the Statute is relied on there can be no decree for the complainant, though the agreement is admitted in the answer, and consequently, he must then prove an agreement completely in writing, or such a part performance of the parol contract stated in the bill and admitted in the answer as will take the case out of the Statute, Ogden v. Ogden, 1 Bl. 288. If a plaintiff set up in his bill an agreement invalid by the Statute unless in writing, which is denied in the answer, it is perhaps not necessary for the defendant further to insist on the Statute as a bar, but the plaintiff must establish the agreement at the hearing by written evidence, Small v. Owings, 1 Md. Ch. Dec. 363.[13] But if the defendant makes default, or admits the parol agreement without insisting on the Statute, he will be taken to have renounced its benefit, Lingan v. Henderson, 1 Bl. 236; Jones v. Slubey, 5 H. & J. 372; Artz v. Grove *supra;* and an admission in the answer as to part will take the case *pro tanto* out of the Statute, see Graham v. Yates *supra*. But it is to be observed, that an answer confessing a parol agreement as charged in the bill is not equivalent to a written agreement, and it is settled that the answer of one defendant does not bind a co-defendant claiming under him, Winn & Ross v. Albert; Jones v. Hardesty *supra*.

At law, the Statute might formerly have been pleaded, and a precedent of such a plea may be found in Read v. Nash, 1 Wils. 305; but it may now be availed of under the general issue, see Lamborn v. Watson *supra*,[14] and in Reade v. Lamb, 6 Exch. 130, a plea, that the promise sued on was a promise to answer for the debt, &c., of another, and that there was no agreement or memorandum or note thereof in writing, and signed by the defendant, was held bad on special demurrer, as amounting to an argumentative denial of the contract stated in the declaration and to the general issue, and see Leaf v. Tuton, 10 M. & W. 393, as to such a special plea being bad under the 17th section of the Statute. So the Statute has, in other respects, made no alteration in the mode of pleading, and, consequently, it need not appear whether there was a promise in writing or not; it is a matter of evidence only, Forth v. Stanton, 1 Wms. Saund. 211, n. (2).

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[12] Billingslea v. Ward, 33 Md. 48; Semmes v. Worthington, 38 Md. 317.

[13] This is now the established rule. See cases note 12 *supra*.

[14] Morgart v. Smouse, 103 Md. 467; Hamilton v. Thirston, 93 Md. 220; Humphries v. Humphries, (1910) 2 K. B. 531; 1 K. B. 796. Where a contract sued on is within the Statute, the declaration need not allege that it is in writing. Ecker v. Bohn, 45 Md. 287; Ecker v. McAllister, 45 Md. 290; Horner v. Frazier, 65 Md. 9; Hamilton v. Thirston *supra*.