part of the answer in which the statute is interposed as a defence, it would be more properly applied to the authority of the agent, than to the agreement, which it is said the agent made. But, when it is recollected, that the authority of the agent need not be in writing, and, that a plea of the statute, upon that ground, would be ineffectual, it would seem to be consonant with those principles which regulate pleadings in equity, to put a different interpretation upon the sentence than would be required by grammatical rule. *Birley* vs. *Staley*, 5 *G. & J.*, 432.

This, then, being an agreement clearly within the statute of frauds, it remains to be seen, whether the complainants have succeeded in bringing their case within the exception of the rule, that such agreements cannot be made out by parol proof, by showing a part performance of the contract; for there can be no doubt, that such part performance will take cases out of the operation of the statute. *Moale, et al.* vs. *Buchanan, et al.*, 11 *G. & J.*, 314; *Hall and wife* vs. *Hall et al.*, 1 *Gill*, 383.

It has been insisted by the counsel for the complainants, that though the defendant has denied the agreement set up in the bill, she has admitted an agreement to sell five acres of land to the complainants; and that, to that extent at least they are entitled to relief. And the case of *Graham et ux., against Yates and others*, is referred to as an authority for the position.

In that case, however, it does not clearly appear, whether the agreement was or was not in writing. The statute of frauds does not, from the report of the case appear to be relied on, and the defendants in their answer express their willingness to convey that part of the property, admitted to have been sold, upon receiving the purchase money and interest.

The case, therefore, is not an authority for the position that the complainants may, as a general rule, rely upon the admissions of the answer, and obtain relief on those admissions, unless they have set them forth in their bill. The contrary doctrine was expressly decided in *Jackson* vs. *Ashton*, 11 *Peters, S. C. Reports*, 229, and I have seen no case maintaining a different rule.