

ment." And it is clear, upon the authorities which have been cited, that if the bill does not contain such allegation, the evidence is inadmissible, and must be excluded.

Upon examining the bill in this case, it will be found to be destitute of any averment of part performance of the agreement, the specific execution of which, it seeks to have enforced. There is no allegation in it, or in either of the exhibits filed with it, of payment of any part of the purchase money, or of the delivery of possession, or of any other act which can by possibility be regarded as a part performance of the contract. The act of part performance, it is to be remembered, "must not be merely introductory, or ancillary to the agreement, but a part execution of the substance of the agreement, and which would not have been done, unless on account of the agreement; an act unequivocally referring to, and resulting from the agreement, and such as the party would suffer an injury from, amounting to fraud by the refusal to execute the agreement." And unless an act, or acts of this kind, are charged in the bill, and proved or admitted, the court will not decree a specific execution of the agreement.

The bill simply alleges, that the complainants purchased of the defendant, Owings, through her agent, Alexander Turnbull, about six acres of ground, including the piece first purchased, and which six acres are described in a plat filed with the bill; but it does not allege, that one dollar of the purchase money was paid to the vendor, or that they, the vendees, were placed in, or took possession of, or made improvements, or expended money on the property, or did, or suffered any act, whatever, which could by any possibility be injurious to them, in case the contract remains unexecuted. The ground upon which the court proceeds, in decreeing the specific performance of a parol agreement in relation to lands, notwithstanding the statute of frauds is, that in the case of a clear part performance of such an agreement by one party, it would be a fraud in the other to refuse to perform the agreement on his part. It would be perverting the statute from a shield against, into an instrument of fraud. *Hamilton vs. Jones*, 3 G. & J., 127; *Mary-*