

PART PERFORMANCE.

1. There can be no doubt that if a party has succeeded in proving a contract, and in showing that it has been in part performed, he is entitled to have it specifically executed. *Owings vs. Baldwin & Wheeler*, 120.
2. This right is founded, not upon the notion that part performance is a compliance with the statute of frauds, but upon the ground that it takes the case entirely out of the statute. *Ib.*
3. In order to take a case out of the statute, on the ground of part performance, the plaintiff must make out by clear and satisfactory proof, the existence of the contract as laid in the bill, and the act of part performance must be of the identical contract set up. *Ib. Beard vs. Linthicum*, 345.
4. It is not enough that the act is evidence of some agreement, but it must be unequivocal and satisfactory evidence of the particular agreement charged in the bill. *Beard vs. Linthicum*, 345.
5. Where delivery of possession is relied upon, it is indispensable that such delivery to, and taking possession by, the defendant, is referrible to the contract alleged in the bill, and not to a distinct or different title. *Ib.*
6. To take a parol agreement out of the statute of frauds, on the ground of part performance, the acts done in part performance must not only be referrible exclusively to the contract set up in the bill, but the contract itself must be established by evidence, clear, definite and unequivocal in its terms. *Shepherd vs. Shepherd*, 244.
7. The party must show acts unequivocally referring to and resulting from the agreement set up, such as the party would not have done unless on account of that very agreement, and with a view to its performance; and the agreement set up, must appear to be the same with the one partly performed. *Ib.*
8. The Chancellor refused to decree the execution of the contract set up in this case, because there was a want of the essential element of unequivocal certainty in the agreement, and in the acts relied upon as part performance. *Ib.*
9. The ground upon which a court of equity decrees the specific performance of a parol agreement respecting lands, is, that in case of a clear part performance 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. *Small vs. Owings*, 363.
10. When acts of part performance are relied upon to take a parol agreement for the sale of lands (when denied by the answer) out of the operation of the statute of frauds, full and satisfactory evidence must be offered of the terms of the agreement, and of the performance of it on the part of the complainant. *Ib.*

See PRACTICE IN CHANCERY, 23.

PATENTS.

1. A warrant of resurvey does not authorize a party to include a vacancy not contiguous to the tract or tracts to be resurveyed. And a person who has not a title to the land on which he obtains a warrant of re-