

PARTIES TO SUITS—*Continued.*

them, and all dividends that shall have accrued thereon, and pay over the residue, if any, to the grantor, or its successors or assigns. **HELD—**

That this deed does not place the contributors and corporation in the relation of partners with each other, or among themselves; that it provides simply for a loan of money by the contributors to the corporation, to secure the re-payment of which the latter gave them a lien upon the lot and premises in question, and that, consequently, they have superior rights to any creditor of the corporation becoming such, after the execution of the deed. *Conkling vs. Washington University*, 497.

11. Partnership effects must be first applied in liquidation of the claims of joint creditors, before any partner can claim any thing for his share or debt, and after a determination of the partnership, each partner is entitled to be allowed against the other, every thing he has advanced or brought into the concern, and nothing will be considered as the share of any one, but that proportion of the residue to which each on a balance of the accounts will be entitled. *Ib.*
12. Assuming that the contributors and corporation can be regarded as partners, still E. G., who is only a judgment creditor of one of the partners, cannot be preferred to the contributors, who are creditors of the partnership for advances made to it. *Ib.*
13. The excess of one partner's advance over those of the other, constitute a preferred claim upon the partnership property, or its proceeds as against the individual creditors of the bankrupt partner. *Ib.*

PART PERFORMANCE.

1. G. and S. having been appointed trustees to sell certain property, in a cause in which they, as administrators of A. F. were complainants, and one R. F. was defendant, sold the same to the said R. F. By the Auditor's report in that case, which was confirmed by the Chancellor, the sum of \$1208 76, was assigned to said R. F. Upon a bill filed by the the administrator of R. F., against the said trustees, to enforce the payment of this sum, it appearing that R. F., having failed to comply with the terms of sale, afterwards sold the property to one H. S., with an agreement that the purchase money should be applied to the payment of incumbrances and other debts due by R. F., and that these debts, to which the money was applied by the trustees, exceeded the sum awarded to her by the Auditor, it was—**HELD**

That, if the statute of frauds would, under any circumstances, apply to such an agreement, the acts of part performance by the trustees, would clearly take it out of its operation, and it is, therefore, clear the plaintiff can have no relief upon his bill. *Friese vs. Glenn & Stewart*, 361.

2. Where a party relies upon part performance, as a ground for the specific execution of a contract, he must show, by clear evidence, that the acts constituting such part performance, are referable exclusively to the identical contract, set up in his bill, or they will not avail him.

Duwall vs. Myers, 402.

See SPECIFIC EXECUTION.