

in question, that to take a case out of the statute of frauds on the ground of part performance, the plaintiff must make out, by clear and satisfactory proof, the existence of the contract as charged in the bill. And the act of part performance must be of the identical contract set up by him. *Owings vs. Baldwin and Wheeler*, 1 *Maryland Ch. Decisions*, 120, afterwards affirmed on appeal to the Court of Appeals; *Beard vs. Linthicum*, *ib.*, 345. It is impossible to dispute the principle, and the disinclination of the Courts to make further inroads upon the statute by excepting cases from its operation is apparent in all the recent cases. *Philips vs. Thompson*, 1 *Johns. Ch. Rep.*, 131; *Parkhurst vs. Van Cortlandt*, *ib.*, 284. The disposition is rather to retrace the steps which have been taken in what is now considered the wrong direction, but at all events, if this is not so, a firm determination exists to make no further relaxation of the statute.

It is quite true that in this case the representatives of the husband did not come into the Court asking it to interfere actively to compel the specific performance of the contract set up in their answer. They are here as defendants, and seek to defend themselves against the claim asserted in the bill, upon the ground of an agreement, by which they insist that the property in dispute belongs to their testator; and it is urged, that upon a principle recognised by this Court, they will not under such circumstances be required to exhibit as strong a case as would be required of them if they, as plaintiffs, were invoking the active interposition of the Court in their behalf. 2 *Story's Eq.*, secs. 769, 770, 771. If the plaintiff in this case was seeking to enforce the specific performance of a written contract against them, grounds of defence would be open in opposition to such application, which would not avail them if they as plaintiffs were asking the aid of the Court, because chancery when called upon to exert its extraordinary power to coerce the specific performance of contracts, acts with less restraint than when exercising its ordinary jurisdiction, and will not interfere, unless satisfied that the application is just and reasonable in all respects. *Waters vs. Howard*, 1 *Maryland*