

PARTNERSHIP, PARTNERS.—*Continued.*

the sum due him, such a settlement cannot be surcharged or falsified on ground of error or mistake. *Ib.*

4. Where a contract of dissolution provided that the liquidating partner "should, from time to time, as assets may be received," pay to the other a certain sum, "to place him upon equal footing with" the former, and then divide the surplus in the proportion of one-third to the former and two-thirds to the latter, and the assets proved insufficient to make up this equality, it was HELD—

That the latter was entitled to recover from the former one-third of such deficiency, the former having received from the partnership before dissolution a certain sum, in regard to which the equality was to be made by payment to the latter of the sum stipulated in the contract of dissolution. *Ib.*

5. The contract also stipulated "that no interest is to be allowed or paid by or to either party from the date" of the contract. HELD—

That this refers to all sums that may be paid to either party from the date of the contract, including that required to make up the equality above referred to. *Ib.*

See EVIDENCE, 6.

PART PERFORMANCE.

1. Where the marriage itself is the only act of performance of a parol ante-nuptial agreement, that the *choses in action* of the wife should, in consideration of the marriage, become the property of the husband, if the agreement remains unexecuted, a Court of Equity has no power to decree its specific performance in opposition to the statute of frauds. *Gough vs. Crane*, 119.
2. Marriage itself, standing alone, is no part performance within the statute of frauds. *Ib.*
3. A parol agreement made in consideration of marriage is founded on a valuable consideration, and upon consummation of the marriage and delivery of the property in pursuance of the agreement, the case is taken out of the operation of the statute, and will be enforced in equity. *Ib.*
4. The circumstances of this case are distinguishable from those of the case of *Dugan et al. vs. Gittings et al.*, 3 *Gill*, 138, in essential particulars; there being here no legal testimony of mutual promises to marry, and none to bind the husband to the terms of the agreement as stated by the wife, and no clear evidence that the property was delivered in pursuance of the agreement. *Ib.*
5. 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. *Ib.*
6. The disinclination of Courts to make further inroads upon the statute, by excepting cases from its operation, is apparent in all the recent cases, and a firm determination exists to make no further relaxation of it. *Ib.*
7. Where a party is defending himself against the specific execution of a written contract, grounds of defence will be open to him which would not avail him if he as plaintiff were asking the aid of the Court. *Ib.*
8. Chancery, when called upon to coerce the specific performance of con-