In cases of this kind the defendant may be compelled to answer fully to all the material allegations of the bill, whether he insists upon the benefit of the statute of frauds or not. But, if the statute is relied on, there can be no decree for the plaintiff, although the parol agreement should be admitted by the answer; and, consequently, to obtain relief, in such case, the plaintiff must either prove an agreement completely in writing, or such a part performance of the parol agreement admitted by the answer, as will take the case out of the statute. But if the defendant does not say any thing about the statute, then he must be taken to have renounced the benefit of it.(*e*)

The sole question is, then, whether the late *Amos Ogden* did sign an agreement in writing in consideration of this marriage, binding himself to give his niece *Nancy*, a marriage portion of twelve thousand dollars as is alleged; or whether there has been such a part performance as should induce the court to enforce a compliance with any parol agreement to that effect.

Marriage alone is not considered as a part performance of a contract of this nature;(*f*) yet if a person writes a letter promising to give a fortune with his daughter or niece to a man if he should marry her; and, under the encouragement of the letter, the man does marry her, he shall recover; the agreement having been executed, as far as it could be, on his part.(*g*) And such a letter addressed to the father, or a friend of the man, on his behalf, will be as obligatory as if addressed to the man himself.(*h*) But here, as no parol agreement has been admitted or proved, it will be unnecessary to say what should be deemed a binding partial performance of a contract in consideration of marriage.

The whole of this case rests upon the letter of the 22d of May, 1817. If that cannot be considered as an agreement within the meaning of the statute of frauds, there is an end of the case. The cases in which letters have been considered as constituting such an agreement, have gone fully as far, perhaps farther, than a just construction of that statute will warrant. They all, however, go upon the principle, that the court must be satisfied by a fair interpretation of the letters, that they import a concluded agreement; or afford sufficient materials for a more formal agreement.

(*e*) Whitchurch *v.* Bevis, 2 Bro. C. C. 567; Cooth *v.* Jackson, 6 Ves. 37; Blagden *v.* Bradbear, 12 Ves. 471; Rowe *v.* Teed, 15 Ves. 375.—(*f*) Taylor *v.* Beech, 1 Ves. 297.—(*g*) Seagood *v.* Meale, Prec. Cha. 560.—(*h*) Moore *v.* Hart, 1 Vern. 201; Welford *v.* Beezely, 1 Ves. 6; S .C. 3 Atk. 503.