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PART PERFORMANCE.—*Continued.*

tracts, acts with less restraint than when exercising its ordinary jurisdiction, and will not interfere unless satisfied that the application is fair, just, and reasonable in all respects. *Ib.*

2. Where the representatives of the wife are asking a Court of Equity to direct the representatives of the husband, to deliver over to them the *choses in action* of the wife not reduced into possession by the husband in his lifetime, and the defence taken is part performance of a parol ante-nuptial agreement, the defendants should be held to the same clear, definite, and unequivocal proof of the contract set up in the answer, as if they were plaintiffs asking for its specific performance. *Ib.*

PERSONAL ESTATE.

See CHARGES UPON LANDS DEVISED, 1 to 6.

POST-NUPTIAL SETTLEMENT.

See FRAUDULENT CONVEYANCES, 30, 31.

PRACTICE IN CHANCERY.

1. The complainant, the holder of a mortgage from the defendant, dated the 24th of August, 1842, obtained a decree upon his bill filed on the 22d of May, 1847, against the mortgagor alone for the sale of the mortgaged property, and became the purchaser thereof at the sale made on the 7th of August, 1847. The Auditor, by his report of the 4th of December, 1847, applied \$483 85 of the proceeds to complainant's mortgage, \$1274 15 to an older judgment against the defendant, and \$480 55 to W.'s judgment rendered in September, 1845, and the balance of \$319 95 to the mortgagor. The report was confirmed on the 26th of July, 1848. On the 10th of September following, K., the holder of a mortgage on the same property, dated the 23d of January, 1843, filed his petition, stating the existence of his mortgage, and claiming the surplus proceeds after payment of liens prior to his own, and praying that the order ratifying the Auditor's report might be rescinded. The 9th of October was fixed by order of the Court for hearing this petition upon notice to the parties interested. E., the assignee of W.'s judgment, answered this petition, denying knowledge of the mortgage, and requiring proof of the allegations thereof. The petitioner was not present on the day fixed for the hearing, no proof had been taken by him, and no excuse offered for his failure so to do. The petition was then dismissed by an order passed on the 10th of October, 1849. Afterwards, on the 5th of November, 1849, he filed a second petition, alleging that he had no notice of the answer of E. to his former petition, and, therefore, did not know what evidence he would be required to produce, and praying that he might be allowed now to produce evidence in support of his claim. **HELD—**

That it was the duty of the petitioner to have been present on the day fixed for the hearing of his first petition to take care of his rights, and having omitted this duty, he has no right now to call upon the Court a second time to relieve him; and that it would be establishing a most loose and inconvenient system of practice to grant his present application, and again open the order confirming the Auditor's report. *Ducker vs. Belt*, 13.

2. The Court cannot revoke the order passed on the 26th of July, upon a petition not filed until the 5th of November, because the July term had then