and timber growing upon the limit. Under the Crown Timber Act, R. S. O. 1897 ch. 32, a timber license is to describe the land, i.e., the limits, upon which the timber may be cut, and (1) shall confer for the time being upon nominee the right to take and keep exclusive possession of the land so described; (2) shall vest in the holders thereof all rights of property whatsoever in all trees, timber, and lumber cut within the limits of the license during the term thereof; and (3) shall entitle the holders thereof to institute any action against any wrongful possessor or trespasser and to prosecute all trespassers and other offenders to punishment and to recover damages, if any. . . .

[Reference to McDonald v. McKay, 15 Gr. 391, 18 Gr. 98; St. Catharines Milling Co. v. The Queen, supra; Bulmer v. The Queen, supra; Breckenridge v. Wooton, 3 Allen (N. B.) 303; Sinnott v. Noble, 11 S. C. R. 581, 584; Bennett v. O'Meara, 15 Gr. 296.]

I am unable, with all deference to my learned brother, to see that there has been any such act of part performance as to take the case out of the statute. The only thing relied upon in this respect, though it is not specially referred to in the judgment, seems to have been the division of the proceeds of the drive contracts, but this, at the most, can only be regarded as the payment of the purchase money, which, as it now appears to be settled, is not sufficient: Maddison v. Alderson, 8 App. Cas. 467, 479; Fry on Spec. Perf., secs. 613, 614.

Plaintiff also contended that the timber limit was held as partnership property, or that defendant's interest therein was to be held as such, as between defendant and himself, and that the statute was not applicable, on the principles laid down in Dale v. Hamilton, 5 Hare 369; Archibald v. McNerhanie, 29 S. C. R. 564. Of this, however, I see no evidence. The licensees were, so far as appears, co-owners and nothing more, nor, taking it to be that there was such an agreement as plaintiff sets up, was the situation as between himself and defendant different in respect of the intent dealt with by that agreement. Even if the limit was in fact held by the three licensees as partners, it would not follow that the transfer by one of them of his own or part of his own interest would not be within the statute: Black v. Black, 15 Georgia.

The case of Stuart v. Mott, 23 S. C. R. 384, does not assist plaintiff, as the only agreement proved was for the transfer of an interest in the limit, not, as in that case, an agreement for the division of the proceeds of the property when sold.