of all the circumstances, whether to allow for past maintenance out of the corpus of an infant's estate not intended by a testator to be so applied.

A farmer, by his will, gave to his widow his goods and chattels absolutely; also an annuity; and the use of his homestead and other real estate during her widowhood; she married again, and claimed to be paid for the past maintenance of the testator's children from the time of his death, out of the corpus of the estate devised to them at twenty-one and otherwise. The Court, on further directions, refused to allow the claim.—*Edwards* v. *Durgen*, 19 C. R. 101.

LEASE—CONTRACT FOR WORK PARTLY EXECUTED—SPECIFIC PERFORMANCE.

Equity, now-a-days, does not, as a general rule, enforce specifically a contract between a landholder and a builder for the erection of a house or the like; but specific performance of agreements to execute works is enforced in cases where the plaintiff shows, what the Court considers to be, a sufficient ground of equity to entitle him to that relief.

A bill alleged that the plaintiff contracted with the defendants to lease to them certain lands, and to erect thereon for their use a stone building of a specified size according to plans and specifications furnished by the defendants; that accordingly the plaintiff had expended $4,000 on the building, under the superintendence of the defendants, and according to plans furnished by them; that he had done everything for which the defendants had given directions; and that the defendants had accepted the building and taken possession of part of it; but it appeared that the machinery was not completed in all respects:

Held, that the allegations of the bill, if proved, would entitle the plaintiff to relief.—[STRONG, V. C., dissenting.]—*Colton* v. *Rookledge*, 19 C. R. 121.

PARTNERSHIP—INTEREST—COMMISSION.

In the absence of a special custom or an agreement, interest is not usually allowable to a partner on advances of capital made by him to the partnership, or for partnership purposes.

Where parties entered into an agreement that they should purchase goods on joint account, and at the joint risk, and that one of the parties should furnish the funds in the first instance, it was *held* that interest could not be charged on the funds so furnished.

In such a case a firm in Canada was to advance the funds, and the goods were to be consigned for sale to their firm in Liverpool, which went by a different name:

Held, that they could not charge commission on their sales.—*Jardine* v. *Hope*, 19 C. R. 76.

PARTNERSHIP—SEPARATE ESTATE.

The rule in Equity, as well as in Bankruptcy, is, that the separate estate of a partner is to be applied first in discharge of his separate debts; and, in applying this rule, money paid by co-partners on a liability created by the fraud of the partner towards them, is treated as a separate debt, provable and payable *pari passu* with the other separate creditors of such partner, in case of his death, insolvent.

The mere liability so fraudulently created cannot be proved against the separate estate as a debt until the liability is paid, or until something equivalent to payment takes place. Where the fraud was in the use of the partnership name on bills, the other partners becoming insolvent, the holders of the bills proved them against the partnership estate; the assignee, in a suit for administering the separate estate of the guilty partner, claimed to prove the amount against the separate estate; but the Master restricted the proof to the expected dividend from the partnership estate and the separate estate of the surviving partners; and the Court *held* that the assignee was not entitled to prove for a larger sum.—*Baker* v. *Dawbarn*, 19 C. R. 113.

TENDER.

A tender of mortgage money with a statement that the party tendering did not consider that the amount tendered was due, and that the other would thereafter be compelled to repay the excess, was held not to have been invalidated by this statement.

A tender to the holder of a mortgage (who claimed a larger sum) with a condition that the mortgage, on the sum tendered being accepted, should be given up, was held bad, as being a conditional tender.—*Peers* v. *Allen*, 19 C. R. 98.

ADMINISTRATION SUIT—EXAMINATION—COSTS.

If in an administration suit fraud is charged in the pleadings, it may be proper for defendants to examine the plaintiff thereupon in order to disprove the charge, even though they succeed in the objection that a proceeding by bill was not necessary.

In examinations *de bene esse* if the evidence is not used and the witnesses are within reach of subpœna, the costs of the examination should not be allowed. Where the evidence is material and is used, the costs become costs in the cause.—*McMillan* v. *McMillan*, 8 L.J. N.S. 285.