

with the answer to prove that it was withdrawn from Cromwell, or Cromwell's executor, (he having died in 1832,) in small sums, and in that way transferred to Priestly from time to time. So far, therefore, as relates to the mortgage debt due from James A. G. Waters, I am of opinion, that it sufficiently appears, that it was the separate estate of Mrs. Spencer, and as such, recognized and consented to by her husband, and that she is now entitled to a decree of foreclosure and sale of the mortgaged premises for the payment thereof.

The next question for consideration relates to the moneys invested in the stock debt of the city of Baltimore. These stocks, according to the answer, were purchased with the balance of the money which had been in the hands of Priestly, and which amounted to about three hundred dollars, and about the sum of four hundred and sixteen dollars given her by her husband chiefly in what are called rail road orders.

The defendant's title then to these stocks, or their proceeds, to the amount of \$416, (they having been sold by her,) depends upon the sufficiency of the gift from her husband, as asserted in the answer. That courts of equity will uphold gifts from a husband to his wife, after marriage, is clearly established, though such gifts are ordinarily void at law, and the gift will, as against him, but not as against his creditors, vest in the wife an unimpeachable right of property, and will be treated as her exclusive and separate estate. 2 *Story's Eq.*, sections 1374, 1375; *Lucas vs. Lucas*, 1 *Atk.*, 270, 271. But to establish a gift of this description, the courts of equity require clear and incontrovertible evidence, and, in my opinion, the defendant in this case has failed, so far as the alleged gift is concerned, in laying before the court that convincing and irresistible proof which the rule requires. 2 *Story's Eq.*, section 1375.

The case, to be sure, is not wholly destitute of proof upon this point, but there is not to be found that kind of clear and satisfactory evidence which, for obvious and wise purposes, is required to make out a title to property under such circumstances. I am, therefore, of opinion, that the defendant, Charlotte Spencer, must account with the plaintiff, for the proceeds