

DIXON GOUGH, ADMR OF
MARY CRANE,
vs.
ROBERT CRANE AND JOHN A. CRANE,
EX'RS OF GEO. CRANE.

MARCH TERM, 1852.

[CHOSSES IN ACTION OF THE WIFE—PART PERFORMANCE OF PAROL ANTE-NUPTIAL CONTRACT—SPECIFIC PERFORMANCE—JURISDICTION OF EQUITY TO DECREE DELIVERY OF BONDS TO THE REPRESENTATIVE OF THE WIFE.]

WHERE the husband neither reduces the *choses in action* of the wife into possession during coverture, nor during his life in case he survives her, they devolve at his death upon her representatives.

The Act of 1798, ch. 101, sub. ch. 5, sec. 8, changes in this respect the English statute of distributions, which gives to the representatives of the husband who survives his wife, *choses in action* not reduced to possession, to the exclusion of the representatives of the wife.

If the husband reduces the *choses in action* of his wife into possession during his lifetime, or recovers judgment upon them at law or in equity, either in his own favor or in favor of himself and his wife, and he survives her, and subsequently dies, they devolve upon his representatives.

Where the marriage itself is the only act of performance of a parol antenuptial agreement, that the *choses in action* of the wife should, in consideration of the marriage, become the property of the husband, if the agreement remains unexecuted, a Court of Equity has no power to decree its specific performance in opposition to the statute of frauds.

Marriage itself, standing alone, is no part performance within the statute of frauds.

A parol agreement made in consideration of marriage is founded on a valuable consideration, and upon consummation of the marriage and delivery of the property in pursuance of the agreement, the case is taken out of the operation of the statute, and will be enforced in equity.

The circumstances of this case are distinguishable from those of the case of *Dugan et al. vs. Gittings et al.*, 3 Gill, 138, in essential particulars; there being here no legal testimony of mutual promises to marry, and none to bind the husband to the terms of the agreement as stated by the wife, and no clear evidence that the property was delivered in pursuance of the agreement.

Declarations of the lady made in the absence of the intended husband are not admissible to prove the agreement to marry.

Declarations of the lady made in the absence and out of the hearing of the intended husband, to the effect that they had made an agreement, that the husband was to "have all her bonds" and "to allow her the interest on them during her life," are not admissible to bind the husband.