

to the said George Crane, and that in accordance with said gift and agreement, the said bonds were delivered to the said George Crane, and remained in his possession up to the time of his death, in August, 1849." Again, "that the said bonds in consideration of the approaching marriage between the said George Crane and Mary Gough, and which said marriage did take place at the time aforesaid, were, by the agreement of the said Mary Gough with said George Crane, to become the property of the said George Crane at the time of his intermarriage with her, and that in consequence of said agreement, and the said marriage, the said bonds came into the possession and did become the property of the said George Crane, and that respondents, as his executors, are now entitled to them."

The defence, therefore, assuming that the objection to the jurisdiction of the Court is not well taken, is put upon the ground of an *ante-nuptial* agreement, by which it is alleged that these *choses in action* became upon the marriage the absolute property of the husband, and now should pass to his representatives.

The agreement relied upon in the answer not being in writing, cannot be set up as an objection to the title of the plaintiff unless there is something in the circumstances of the case which will relieve it from the operation of the statute of frauds, which declares that no action shall be brought whereby to charge to any person upon any agreement made in consideration of marriage, unless the agreement, or some memorandum or note thereof, shall be in writing and signed by the party, &c.

The circumstances relied upon here to save this case from the operation of the statute is part performance, and this part performance is the marriage itself and delivery of the bonds to the husband, those being the acts of performance set up in the answer. But it is clear and incontestable that the marriage itself standing alone is no part performance within this clause of the statute for reasons which are strongly stated in the case of *Moutacute vs. Maxwell*, 1 *Peere Wms.*, 618. In that case it will be found that the circumstances supporting the promise which was made by the intended husband to the wife to allow