

her to enjoy her own estate to her separate use, were infinitely stronger than any which exist in this, and yet the Lord Chancellor held the plea of the statute good, and refused to enforce the agreement, and though subsequently, and when by an amended bill circumstances were stated from which it appeared that the agreement was designed to be reduced to writing, but this was prevented by the fraud of the husband, the Court overruled the plea and directed the defendant to answer, saying, that the fraud might entitle the plaintiff to relief, yet the doctrine, that if the parties rely wholly upon the parol agreement neither can compel the other to a specific performance is expressly reasserted; and it was also again declared, that if the marriage could be considered as an execution of the contract to take the case out of the statute, the clause in question would be a perfect nullity. 1 *Eq. Cases Abr.*, 19; *Prec. in Ch.*, 526; *Roberts on Frauds*, 196, 197, 198.

Supposing, therefore, that there was a parol contract between Mr. and Mrs. Crane prior to the marriage that these moneyed securities should in consideration of marriage become the property of the husband, and that the only act of performance is the marriage itself, it is clear upon authority, that if the agreement remains unexecuted, this Court has no power to decree its specific performance, in opposition to the statute of frauds. It is true, this is not a bill by the representatives of the husband asking the Court to decree an execution of this contract against the representatives of the wife, and resisted by them as an invasion of the statute of frauds, but to the bill of the representatives of the wife, praying to have these securities restored to them by the representatives of the husband the latter set up the parol agreement, which has been referred to, and seek protection under it; and the plaintiff, by exception, objects to this defence, and the testimony in support of it, upon the ground that it tends to establish an unexecuted parol agreement; and this, as it appears to me, presents the question whether the contract relied upon can be proved by parol in opposition to the statute of frauds. It is undeniable, as has been already said, that upon our statute, and upon the