

In the case of *Dugan vs. Gittings*, there was not a shadow of doubt of the agreement and the delivery of the possession of the property to the daughter in pursuance of the agreement. The Court speaks of the agreement to give in consideration of the marriage, and the delivery of the possession under the contract as being supported "by a mass of proof which it was impossible to resist." And they say that the performance of the consideration, and the change of possession under the contract are ingredients which, when combined, have always been regarded as relieving the parol agreement from the operation of the statute. But in this case there is no legal admissible testimony of mutual promises to marry, all the proof upon that subject being found in the declarations of the lady made in the absence of the husband, and it is only from the fact that the marriage did in fact take place shortly after the date of the conversations, that the agreement of the parties to be married can be inferred.

Conceding, however, that the circumstances are sufficiently strong to infer a mutual promise to marry, it is very clear that there is no evidence to bind the husband to the terms of the agreement, as stated by the wife to the witnesses. These terms were, that there was an agreement between her and Colonel Crane. "That he, Colonel Crane, was to have all her bonds and notes; and that he was going to allow her the interest of them for pin money." This is the proof of one witness. The other witness proves that Mrs. Gough said, "that she and Colonel Crane had made a bargain. Witness asked her what the bargain was; and she replied, that she had given all her notes for her money to Colonel Crane; and he promised to give her the interest of them as long as she lived." Now, with regard to this part of the contract, which is unquestionably very material, because it essentially impaired, if it existed, the marital rights of the husband, there is no proof whatever other than the declarations of the woman made in the absence and out of the hearing of the husband. And it cannot therefore be pretended that, if the positions of these parties were changed, and she was asking the Court to enforce the contract,