

it could not be done. And not only is there no proof that any such agreement was made by Colonel Crane, but there is no pretence that it ever was performed by him. His right, or the right of his representatives to enforce this contract, rests exclusively upon the fact of the marriage and delivery of the bonds to him as asserted by the answer. But the marriage, as we have seen, is no such part performance as will rescue the agreement from the operation of the statute; and an examination of the proof will show that the delivery of the possession of the bonds cannot be traced with any degree of certainty to the agreement relied upon in the answer. It is certainly, to say the least, very doubtful, whether the securities were delivered to the husband prior to the marriage. On the contrary, my impression is very decided that Mrs. Gough retained them in her own possession until after that event. It is true, in her conversation with Mrs. Drury, which occurred about three weeks prior to the marriage, she says she *had* made a bargain and *had given* her notes to Colonel Crane; but making a bargain and giving do not always or necessarily infer the parting with the possession of the thing given; and upon cross-examination, the same witness expressly says: Mrs. Gough retained the notes in her own possession up to the time of the marriage. And there is not a scintilla of evidence other than what has been mentioned above to prove the contrary. That Colonel Crane should be in possession of the notes after the marriage, is of course consistent with the relations which then subsisted between them, and surely cannot be referred exclusively to the agreement. After the marriage, unless there was some agreement to the contrary, she had no right to withhold them from him.

The proof in this case, therefore, falls far short of the evidence in that of *Dugan vs. Gittings*, and I entertain a strong conviction that if the husband or the husband's representatives were here as plaintiffs, asking this Court specifically to enforce the agreement, the application would be unsuccessful.

It has been repeatedly decided by this Court, and the principle is believed to be too firmly settled to be shaken or drawn