

lish Court of Chancery, and regarded as a part of its practice, is placed by the Court of Appeals upon the higher ground of principle, governing and controlling the Court in its dispensation of equitable jurisprudence, from which it is not at liberty to deviate when the circumstances exist which require its application. And as this equity of the wife is binding even against an assignee for value, it, of course, applies with more controlling force to the case of transfers by operation of law, or by the act of the husband, to general assignees, for the benefit of creditors. The case of *Kinny vs. Udall*, 5 *John's Ch. Rep.*, 464, and several other cases decided in New York, all of which are cited with approbation by the Court in *Duwall vs. The Bank*, maintain this doctrine, and they likewise maintain, that the amount of the provision to be made for the wife in every case must be governed by its peculiar circumstances, and that according to those circumstances the Court may give to her the *whole* or only a part of the property.

In the case of *Kinny vs. Udall*, the authorities are collected and examined, and it is clearly shown that the Court "has a discretion in such cases to give a whole or a part to the wife." The Chancellor, in concluding his review of the cases, asks, emphatically, "Why may not the Court give the wife the whole, in every case, if the justice of it and her condition require it?" The doctrine, he affirms, depends upon the particular practice of the Court, and not on general reasoning, and he concludes that the practice has not been sufficiently fixed and uniform to form a determinate rule, controlling the exercise of the discretion of the Court in the particular case. The question, in every case, being, what is a suitable and adequate provision for the wife under the circumstances?

There is nothing, as I conceive, in the case of *Duwall and The Farmers Bank*, which, justly regarded, will be found to conflict with the rule established in New York, or in England, or to limit or fetter the discretion of the Court upon this subject. The object of the Court of Chancery in establishing this equity is to provide out of the wife's property for her maintenance and the maintenance of her children; and if, to accomplish this purpose,