

been made, to direct a settlement not upon the wife only, but upon the children also. (e)

To obtain the benefit of this equity the wife may come in and make her claim in any suit instituted by her husband; or she may by her next friend file a bill against him or his legal assignees in bankruptcy or insolvency; for neither the husband, nor any person standing in his place can have her fortune, without making a provision for her. The wife's equity is a mere creature of this court; and is therefore never allowed, as between citizens of other states, according to the laws of which the wife is allowed no such equity. (f) It is a claim founded upon natural justice; it resembles the paternal care which a Court of Chancery exercises for the benefit of orphans; and assuming the place of a parent, the court requires a settlement upon the wife, upon the presumption that it demands no more than would have been insisted on by a prudent father. But the court uses no active means of enforcing such a settlement; it only proposes to him who asks equity, that he should do equity; and therefore, the husband cannot be obliged to make a settlement upon his wife. If he does not require the possession of his wife's fortune, he must be allowed to receive the interest of it so long as he maintains her; and to have the chance of taking the whole by survivorship. The wife's equity is, in general, a provision made for her and her children of the marriage, to take effect after the death of the husband; but if the husband be insolvent, then the maintenance provided for her, is always a present one, and made to commence immediately; because the husband being under an obligation to maintain his wife, and his doing so, being the condition upon which the law gives him her property; therefore, his incapacity to maintain her, owing to his insolvent condition, gives her an equitable right to claim an immediate provision for her own support. And where the incapacity of the husband to maintain his wife, arises from bankruptcy or legal insolvency, the court fastens that obligation upon the property itself. (g) This settlement is commonly made under the direct authority of the court; but that is not indispensably necessary; for if it be voluntarily made under circumstances in which it would have been ordered by the court it will be sustained. And all such

---

(e) *Murray v. Elibank*, 13 Ves. 1.—(f) *Dues v. Smith*, 4 Cond. Chan. Rep. 257.—(g) *Aquilar v. Aquilar*, 5 Mad. 414.