

of some active duties to support the trust.<sup>9</sup> And a distinction has been taken between a devise or deed to a person in trust, *to collect and pay over* the rents and profits to another, and a devise in trust to permit another *to enjoy* the rents and profits. In the first, the use is executed in the trustee, in the second in the *cestui. que use*.<sup>10</sup> It would follow then that if C. were not a married woman, or if the estate by the terms of the deed were not limited to her sole and separate use, independent of her husband, the deed would be a conveyance under the Statute, and would vest the legal estate in her, notwithstanding her coverture or the provision that she was to have but a life estate. The question then was, did the deed impose such active duties on the trustee, as rendered it necessary for him to have the legal estate to discharge those duties? And the Court held that a separate estate in real property could not be enjoyed by a married woman unless through the interposition of a trustee, which circumstance of itself would imply the performance of some active duties on his part. And it was concluded that C. had but an equitable life estate.

III. So where a man made a lease for years in trust for his wife, and afterwards made a feoffment to uses to the same party and others, it was held that the term was saved by the Statute and not merged, Cheyney's case, Moor. 196, S. C. 2 And. 192; see Carter's lessee v. Tash, 1 Salk. 241.

IV. & V. See Sir E. Sugden's note to Gilb. Uses, 193.

VI. VII. VIII.—**Similarity of Code provision to Statute.**—The Code, Art. 93, sec. 289,<sup>11</sup> which is a codification of the proviso of sec. 36 of the Act of 1715, ch. 39, (supposed by Kilty to have been repealed as \*inconsistent with and repugnant to the Act of 1798, ch. 101,) enacts, "If any married woman shall have any estate settled on her by her husband by jointure or other settlement, before marriage, such jointure or settlement shall bar her of her dower of such husband's lands, yet it shall be lawful for her to accept what her husband shall by his last will and testament devise to her." This section stands in collocation with the five preceding sections of the article relating to devises, &c. in lieu of dower and thirds, as the proviso did to preceding sections of the Act of 1715 on the like subject, and may probably therefore be considered not as repealing the Statute of Henry VIII. or as introducing or substituting another or new law, or as affecting the settled construction of the Statute in relation to jointures, but

<sup>9</sup> *Contra*, if the conveyance is for her sole and separate use. Griffith v. Plummer, 32 Md. 74; Handy v. McKim, 64 Md. 560.

<sup>10</sup> Warner v. Sprigg, 62 Md. 14. But see Byrne v. Gunning, 75 Md. 30. And whenever the trustee is intended to exercise any control over the transfer of the legal title, the legal estate must remain in him. Warner v. Sprigg, *supra*.

<sup>11</sup> Code 1911, Art. 93, sec. 306. See also note 23 *infra*.