

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 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. *Aquilar v. Aquilar*, 5 *Mad.* 414. 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 * settlements are deemed valid even against the creditors of the husband. *Moore v. Rycault*, *Prec. Cha.* 22; *Nicholas* 577 *v. Nicholas*, *Prec. Cha.* 546; *Brown v. Elton*, 3 *P. Will.* 202; *Sleech v. Thorington*, 2 *Ves.* 561; *Jewson v. Moulson*, 2 *Atk.* 419; *Middlecome v. Marlow*, 2 *Atk.* 520; *Bond v. Simmons*, 3 *Atk.* 20; *Salisbury v. Newton*, 1 *Eden*, 370; *Pryor v. Hill*, 4 *Bro. C. C.* 139; *Burdon v. Dean*, 2 *Ves. Jun.* 607; *Langham v. Nenny*, 3 *Ves.* 469; *Macawlay v. Philips*, 4 *Ves.* 15; *Franco v. Franco*, 4 *Ves.* 528; *Blount v. Bestland*, 5 *Ves.* 514; *Elibank v. Montolieu*, 5 *Ves.* 737; *Glaister v. Hewer*, 8 *Ves.* 206; *Murray v. Elibank*, 10 *Ves.* 84; *Elworthy v. Wickstead*, 1 *Jac. & Walk.* 69; *Elliott v. Cordell*, 5 *Mad.* 150; *Beams' Orders*, 464; *Deeks v. Strutt*, 5 *T. R.* 690.

Here the wife claims the whole of this residuary legacy, to be settled upon her to her own exclusive use. There can be no doubt that she must have a provision made for her to take effect immediately; and that upon the two last mentioned grounds of equity. First, because it is admitted that this legacy was given to her; and it appears that her husband has treated her ill, has taken up his residence in another State, and has left her entirely destitute of any aid from him. And secondly, even supposing no separation