

shall have a separate maintenance; the agreement to live apart is void; but the stipulation to pay separate maintenance is legal, and may be enforced; and in many situations, husband and wife may treat together, provided they treat fairly. Here the subject of * this treaty between the parties was fair and honest, and whatever might have been the sufferings of Lewis Helms **581** during his imprisonment for debt in the jail of Baltimore County, or however that suffering might have been brought upon him, there is not the slightest proof that he was, as has been alleged, under any duress, apprehension of harm, or mistake as to the nature and object of the agreement of the 29th of August, 1823, at the time it was signed by him. That instrument, on his part, was his unconstrained voluntary act, done with a full knowledge of all the facts, and of all his legal rights. By which writing he says, that he "doth bind himself to renounce all the claim he has against his wife A. G. M. Helms, as well as the claim he might have against the estate of her deceased brother Carsten Newhaus." Now the only sound and sensible construction that can be given to this agreement, compatibly with the full existence of the marriage contract, which the parties themselves cannot dissolve, is, that the husband has thereby consented, that his wife's whole fortune shall be settled upon her, to the use of herself, exclusively of her husband as fully as may be, in all respects whatever. It is in this light that I view this agreement. I take it as an explicit consent given by him, that his wife's whole fortune may be settled upon her, and I shall decree accordingly.

But the plaintiff Anna had one son, an illegitimate child, born before her marriage with Lewis Helms. Can he be allowed to benefit by the proposed settlement? This is the next point to be considered.

It is a general rule, that in making provision for the wife, the Court extends it to the children of the marriage; and, in many cases, it is extended to the children of the wife by that or any other marriage. And although the wife may, at any time after her share has been ascertained, *Jernegan v. Baxter*, 6 *Mad.* 32, come into Court and relinquish her right, founded on what is called "the wife's equity," yet subject to her release, her children acquire a vested interest in the provision, directed to be made, from the date of the order; so that if she dies after that period, without releasing it to her husband, they may, notwithstanding, come in and have the settlement perfected for their benefit. *Murray v. Eli-bank*, 10 *Ves.* 90; *S. C.* 13 *Ves.* 5; *Lloyd v. Williams*, 1 *Mad. Rep.* 449; *Fenner v. Taylor*, 6 *Cond. Cha. Rep.* 453. In a settlement directed to be made upon a *ward of the Court, where the husband has been guilty of any fraud or gross misconduct, **582** the fortune is always confined to the wife and her children by that or any other marriage; and even where there was strong reason to