

whether the conveyance to the defendant Hayes, would be avoided upon the ground of inadequacy of price, as it seems to me, that there are other grounds upon which the relief sought by the bill might be granted, if the case was in a condition for a final decree.

The bill alleges, and the evidence shows, that the consideration for the conveyance was paid by the complainant, or borrowed upon the credit of her title, and, therefore, that there is a resulting trust in her favor, a trust implied by law, from the presumed intention of the parties, and the obvious justice of the case, and if such is the case, the statute of frauds relied upon in the answer, is no defence, these trusts being excepted from its operation. 4 *Kent's Com.*, 305; *Dorsey vs. Clarke*, 4 *H. & J.*, 551, 556.

That such trusts do result, and that parol evidence is admissible to establish the facts upon which they arise, not only against the deed, but in opposition to the answer, has been shown by Chancellor Kent upon a careful review of the cases. *Boyd vs. McLean*, 1 *Johns. Ch. Rep.*, 582.

The inclination of my mind, therefore, is, that there is a resulting trust in this case in favor of the complainant, and I might proceed at once to pass such a decree, but it seems to me to be proper before any final decision is made, that the mortgagee who advanced the money with which Hendon was paid, should be before the court, as it does not very clearly appear what effect such a decision may have upon the mortgage.

That mortgage was executed by Hayes, as the absolute owner of the property, and a decree pronouncing him to be only the trustee of the complainant, or vacating the conveyance to him, and appointing a new trustee, might so affect the validity or operation of the mortgage, as to require the presence of the mortgagee as a party to the bill. This is a question which is certainly not meant to be decided now, nor any intimation even given of the impression which may have been made upon the mind of the court; all that is intended at this time to be said is, that it is thought advisable that the mortgagee should be brought in as a party; and the case will be