

sent to the sale of her maiden real estate upon the condition that the proceeds thereof should be invested in other real estate for her benefit. This tract called "Elleslie," the answer alleges, was purchased by her husband in conformity with said agreement, and should be now regarded as her estate, or subject to her claim, as a preferred creditor.

The case shows that a parcel of land inherited by Mrs. Brawner, was sold and conveyed by her and her husband to the purchaser, in April, 1826, for the sum of \$4500; and there is parol evidence in the record to show that Brawner, her husband, had been several times heard to say, that he had paid for "Elleslie in part with her money received from the sale of the land of his wife, and that it was intended for her in lieu of the land which had belonged to her, and which had been sold as aforesaid," and in a clause of his will there is a declaration to the same effect.

The plea of limitations was also made to these claims, and the statute of frauds relied upon as a defence to the one upon open account.

The Chancellor, after stating the facts, said :]

THE CHANCELLOR :

The case presents, and there have been discussed at the bar, one or two questions of considerable interest, and upon these the opinion of the court will be briefly expressed.

The question first to be considered, is, how far this alleged agreement between husband and wife, supposing the proof offered to establish it to be sufficient for that purpose, and to proceed from an exceptionable source, can be set up in prejudice of the claims of creditors who became such subsequently to its date?

It is not doubted that a husband and wife may contract for a *bona fide* and valuable consideration, for a transfer of property from him to her, as was said by the Chancellor in *Livingston vs. Livingston*, 2 *Johns. Ch. Rep.*, 537; see also *Atherly on Marriage Settlements*, 160, 161. Nor can it be questioned, that a settlement upon the wife after marriage, in pursuance of