

a valid agreement before marriage, may be good and binding as against the creditors of the husband. But this is not the case of a settlement either before or after marriage. Here there has been no settlement at all, and the question is, whether this particular parcel of land is so impressed with a trust for the benefit of Mrs. Brawner, as to protect it from the claims of the creditors of her husband.

It is, to be sure, contended by the counsel of Mrs. Brawner, that she claims the legal title under the devise to her in the will. But, if she rests her defence upon that title, she must be regarded as a volunteer, and take subject to the claims of creditors; though, in marshalling the assets, the estate devised to her, could not be reached until the descended lands, if any, are first disposed of. 4 *Kent's Com.*, 421; *Chase vs. Lockerman*, 11 *G. & J.*, 185.

It is to be observed, that the only proof of the agreement is to be found in the parol declaration of the husband, made during the coverture, and it needs but little consideration to show how dangerous it would be to allow such evidence to defeat the rights of creditors. The observations of Chancellor Kent upon this subject, in the case of *Reade vs. Livingston*, 3 *Johns. Ch. Rep.*, 488, are full of instruction.

The objection is not placed upon the ground that the agreement was by parol, because, though by parol, still, if carried into effect on the part of the wife, by selling her maiden estate, she would have an equity as against the husband or his heirs, to have it carried into effect on their side; and the statute of frauds would interpose no obstacle. The objection is, that the proof of the agreement is derived exclusively from declarations made by the husband during the coverture; the admissibility of which declarations, for such a purpose, in opposition to the rights of creditors, it seems to me, is very questionable.

But, waiving that objection, and supposing the agreement set up in the answer was in proof by a witness who was present when it was made, I am still of opinion, that, as against the creditors of the husband, and particularly those who became such after the title to the land was vested in him, it cannot be allowed to stand.