

The trust created by that agreement was a *secret* trust. It dates back to the year 1825 or 1826, and though Mr. Brawner lived until the fall of 1838, and the record title was in him from the month of August, 1825, no attempt was made during his life to assert any right or title founded upon the agreement. So far as the record in this case informs us, the first assertion of this right on the part of Mrs. Brawner, was made in her answer to this bill, filed in September, 1845.

Now, it seems to me, it would be establishing a precedent of the most pernicious and perilous character, to allow these secret trusts to be set up to defeat the rights of creditors. If the alleged agreement had been performed by the husband, and the title of the wife placed upon the public records of the county, the case would have presented very different considerations. But here is a case, in which, as early as 1825 or 1826, the husband became the purchaser of the property in question, at a sale made under the authority of a Court of Chancery, and from the year 1835 until the answer of the wife was filed in this cause, in 1845, his title was spread upon the public land records of the county, and he was held out to the world as its undisputed owner.

As I am fully persuaded the secret agreement put forward in the answer of Mrs. Brawner, cannot avail her, even if shown to exist by unexceptionable evidence, as against the creditors of her husband, or at all events against subsequent creditors, it remains to be seen whether she can successfully assert a title to the property upon any other ground.

If it could be shown clearly, that the money with which this land was purchased, was supplied by the wife, a trust might result to her, being implied by law, from the intention of the parties, and the nature and justice of the case; and such trust, being expressly excepted from the operation of the statute of frauds, may be proved by parol, not only against the face of the deed itself, but even in opposition to the answer of the trustee, and possibly after the death of the nominal purchaser. *Boyd vs. McLean et al.*, *Johns. Ch. Rep.*, 582; *Dorsey vs. Clarke et al.*, 3 *H. & J.*, 551; *Maccubbin vs. Cromwell*, 7 *G. & J.*, 157; *Bottsford vs. Burr*, 2 *Johns. Ch. Rep.*, 405.