

held any other property. For aught that appears, he was absolutely destitute of means, and, therefore, viewing the deed as a voluntary one, it must fall, when set up against the claims of pre-existing creditors, even under the less stringent doctrine upon the subject established in this state.

But it has been supposed, that even if the defendants, Baxter and wife, cannot defend their title upon the deed of the 22d of February, 1819, they may rely with success upon that of the 28th of October, 1818, from Murray, the sheriff, to Joshua Swan, by showing, that the consideration money paid by the latter to the sheriff, was the money of Mrs. Baxter, as alleged in the answer. That is, that upon such proof, a trust would result to the party whose money actually paid for the property. It has been contended by the complainant's counsel, that parol proof is inadmissible to establish the fact of such payment, and the evidence is excepted to as inadmissible. The exception, however, in my opinion, cannot be maintained. Resulting trusts implied by law, from the manifest intention of the parties, and the nature and justice of the case, are expressly excepted from the operation of the statute of frauds, and the fact of payment may be established by parol proof. 4 *Kent's Com.*, 304, 305; *Dorsey et al. vs. Clarke et al.*, 4 *Har. & Johns.*, 551. But though it is competent to the party to prove the fact of payment by parol, yet, it is indispensably necessary that it should be made out by plain, direct and unequivocal evidence. In stating the rule, Chancellor Kent says, "when an estate is purchased in the name of A. and the consideration money is actually paid at the time by B. there is a resulting trust in favor of B., provided the payment of the money be clearly proved." But I do not find, in this case, that clear evidence which is required to make out a resulting trust, and even if the evidence was stronger than it appears to me to be, I should hesitate to give it the effect of engrafting a trust by implication upon this deed, in view of the subsequent deed of the 22d of October, 1849. If the money paid for the land was the money of Mrs. Baxter, and a trust resulted to her in consequence thereof, it is difficult to conceive a satisfactory reason for taking a deed of the char-