

WILLIAM J. COLE,  
 vs.  
 DANIEL O'NEILL ET AL.

} JULY TERM, 1851.

[MARITAL RIGHTS OF A HUSBAND.]

OFFICIAL copies of deeds taken from the records, are *prima facie* evidence of everything necessary to the validity of the instruments.

A voluntary conveyance by a woman in contemplation of marriage, is avoidable by the husband, from whom it was concealed, or who had no notice of it, as in derogation of his marital rights, and a fraud upon his just expectations.

But it is indispensably necessary to the successful impeachment of such a deed, that the husband should be kept in ignorance of it, up to the moment of the marriage, and even if he be so kept in ignorance, it will depend upon circumstances whether it be valid or not; the question in all such cases is whether the evidence is sufficient to raise fraud.

If it appears that the conveyance was made during the treaty and in contemplation of marriage, and it does not appear that it was made known to the intended husband, either expressly or by construction of law, he will be presumed to have been ignorant of it, and the *onus* is upon the party claiming under the deed to show affirmatively that he had notice.

It is the settled American doctrine that the registration of a conveyance operates as constructive notice upon all subsequent purchasers of any estate legal or equitable in the same property, and it is not easy to suggest a good reason why this doctrine should not apply to the intended husband.

Property was settled upon a wife by her first husband for her separate use, free from any control of her husband, with the power of absolute disposition by deed or will. HELD—that this settlement was operative as against the marital right of a second husband.

The protection which Chancery gives to the separate estate of a married woman, with its qualifications and restrictions, attaches to it throughout a subsequent coverture, the principle being that a person marrying a woman so circumstanced is considered as adopting it in the state in which he finds it, and bound in equity not to disturb it.

Where a portion of the property in dispute was equitable, and the plaintiff's title could not, therefore, be asserted in a court of law, and the number of tenants great, and endless litigation might and probably would ensue at law, the jurisdiction of equity may be maintained.

In a case where the plaintiff shows equitable title to a part of the property in dispute, and a legal and equitable title to the rest, it being decided that the defendant has no title legal or equitable, and where preservation of the property requires it, a receiver will be appointed.