

It may perhaps be regarded as an established principle of this Court, that 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; though, as was said by the Lord Chancellor in *St. George vs. Wake*, 1 *Mylne & Keene*, 610, the principle rests rather upon a uniform current of *dicta*, than upon adjudged cases. In truth it was affirmed in that case, in which all the previous decisions were reviewed, that the case of *Goddard vs. Snow*, 1 *Russ.*, 485, was the only case in which a conveyance by the wife, though without consideration, was set aside simply because made during a treaty of marriage and without the knowledge of the intended husband.

As moreover everything depends upon the fraud supposed to be practiced upon the husband, it is indispensably necessary to the successful impeachment of the settlement that he should be kept in ignorance of it up to the moment of the marriage; and even if he is so kept in ignorance, it will depend upon circumstances whether it be valid or not. 1 *Mylne & Keene*, 610; 2 *Kent's Com.*, 174; *The Countess of Strathmore vs. Bowes*, 1 *Ves. Jr.*, 22. In this last case, Lord Thurlow said, "A conveyance by the wife, whatsoever may be the circumstances and even the moment before the marriage, is *prima facie* good, and becomes bad only upon the imputation of fraud;" and in that case he refused to set aside the conveyance, though the husband did not know of it. The question, he said, which arises in all these cases is, whether the evidence is sufficient to raise fraud?

There was some discussion in the course of the argument of this case with respect to the party upon whom the *onus* of proof of notice rested. It being contended on the one side, that the husband must show that he had no notice; and on the other, that the party claiming under deed must show affirmatively that he had notice. It appears to me that it would be unreasonable, and contrary to analogies, to require this negative proof of the husband. Indeed, I do not well see