

Magniac Vs. Thompson

Magniac Vs. Thompson

SooperKanoon Citation : sooperkanoon.com/79402

Court : US Supreme Court

Decided On : 1833

Appeal No. : 32 U.S. 348

Appellant : Magniac

Respondent : Thompson

Judgement :

Magniac v. Thompson - 32 U.S. 348 (1833)

U.S. Supreme Court Magniac v. Thompson, 32 U.S. 7 Pet. 348 348 (1833)

Magniac v. Thompson

32 U.S. (7 Pet.) 348

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

The whole charge of the circuit court was brought up with the record. By the court: "This is a practice which this Court has uniformly discountenanced, and which the Court trusts a rule made at last term will effectually suppress."

This Court has nothing to do with comments of the judge of the circuit court upon the evidence. The case of [Carver v. Jackson](#), 4 Pet. 80-81, cited upon this point.

The question now before the Court is whether the charge to the jury in the circuit court contains any erroneous statement of the law. In examining it for the purpose of ascertaining its correctness, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages and to decide upon them without attending to the context or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. The whole is to be construed as it must have been understood both by the court and the jury at the time it was delivered.

Upon principle and authority, to make an antenuptial settlement void as a fraud upon creditors, it is necessary that both parties should concur in or have cognizance of the intended fraud. If the settler alone intend a fraud, and the other party have no notice of it, but is innocent of it, she is not, and cannot be affected by it. Marriage, in contemplation of the law, is not only a valuable consideration to support such a settlement, but is a consideration of the highest value, and from motives of the soundest policy is upheld with a strong resolution. The husband and wife, parties to such a contract, are therefore deemed in the highest sense purchasers for a valuable consideration, and so that it is *bona fide* and without notice of fraud brought home to both sides, it becomes unimpeachable by creditors.

Fraud may be imputed to the parties either by direct cooperation in the original design at the time of its concoction or by constructive cooperation from notice of it, and carrying the design upon such notice into operation.

Among creditors equally meritorious, a debtor may conscientiously prefer one to another, and it can make no difference that the preferred creditor is his own wife.

Marriage articles or settlements are not required by the laws of New Jersey to be recorded, but only conveyances of real estate, and as to conveyances of real estate, the omission to record them avoids them only as to purchasers and

creditors, leaving them in full force between the parties.

Page 32 U. S. 349

In the circuit court at October sessions, 1826, a feigned issue was made up between the plaintiffs and the defendant to try the question of the ability of the defendant to pay a debt acknowledged to be due to the plaintiffs, and for which judgments had been obtained in their favor. The competency of the defendant to satisfy the debt depended on the validity of a certain marriage settlement made in contemplation of marriage between the defendant and Miss Annis Stockton, daughter of Richard Stockton, Esq., late of New Jersey, to which instrument Mr. Stockton was a party, he being by its provisions the trustee of his daughter. The marriage settlement was as follows:

"Articles of agreement and covenant made and executed this 19 December in the year of our Lord 1825, by and between John R. Thomson, Esq., late of the City of Philadelphia, of the first part, Annis Stockton, daughter of Richard Stockton, Esq., of the second part, and Richard Stockton, of the County of Somerset and State of New Jersey, father and trustee of the said Annis Stockton, of the third part."

"Whereas, a marriage is intended to be shortly had and solemnized between the said John R. Thomson and the said Annis Stockton, and whereas the said Richard Stockton has promised to give unto his said daughter a certain lot or tract of land belonging to him, situate in the County of Middlesex and State of New Jersey directly opposite the mansion house of the said Richard Stockton, between the old road to Trenton and the turnpike road, which consists of between four and five acres of land, be the same more or less, and is bounded on the north and south by the said roads, on the west by lands of Dr. John Vanclave, and the east by a line to be run from the northeast corner of the garden, now in the possession of Mrs. Abigail Field, to the said turnpike road, upon which said lot the said John R. Thomson has begun to build a house. Now it is hereby agreed between the parties aforesaid and the said Richard Stockton, for himself and his heirs, doth hereby covenant and agree to and with the parties of the first and second

parts, their heirs, executors, and administrators, in consideration of the said marriage and of the love and natural affection he hath for his said daughter, that from the time of and immediately after the said marriage shall be solemnized, he, the said Richard Stockton, shall and will stand seized of the said lot and premises and of all and singular the buildings and improvements which shall be erected and made thereon by the said party of the first part, to the uses, trusts, and purposes hereinafter mentioned and to none other, that is to say, in trust to permit the said John R. Thomson, and Annis his wife, during the time of their joint lives, to possess, live in, and occupy the said lot, house, and premises, with the appurtenances, free and clear of all demands, and in case the said parties of the first and second parts do not think proper to inhabit and reside in the said premises, that he, the said Richard Stockton, will let out, upon lease, the said premises and receive the rents, issues, and profits thereof and pay over the same to the said Annis, party of the second part, during the joint lives of the parties of the first and second parts. And if the said John R. Thomson should survive the said Annis Stockton and have issue by her, then in trust to permit the said John R. Thomson, during his life, to inhabit and occupy the said premises if he elect so to do, free and clear as aforesaid, and pay over the said rents and profits, as he shall receive the same, to the said John R. Thomson for the maintenance and support of him and his family, without he, the said John R. Thomson, being at any time thereafter accountable to any person or persons for the said rents and profits. And after the death of the said John R. Thomson, in trust for the child or children of the said marriage in equal shares as tenants in common, in fee simple, and if there shall be no child or children of the said marriage, then, upon the death of either of the said parties of the first and second parts, in trust to convey the said premises to the survivor in fee simple."

"And the said John R. Thomson, for himself, his heirs, executors and administrators, doth covenant and agree to and with the parties of the second and third parts that if the said marriage shall take effect, and in consideration thereof, he will, with all convenient speed, build and furnish the said house in a suitable

manner as he shall judge fit and

Page 32 U. S. 351

proper, and that the said erections, improvements, and furniture, together with the changes and additions which shall be from time to time made shall be subject to and included in the said trusts as far as the same are applicable to each species of property. And further that he will, in the space of one year from the time the said marriage shall take effect, place out on good security, in stock or otherwise, the sum of \$40,000, and hand over and assign the evidences thereof to the said party of the third part, who shall hold the same in trust to receive the interest, profits or dividends thereon as they shall from time to time arise to the said party of the second part, during the joint lives of the parties of the first and second parts, and that her receipts for the same, and also for what may be produced under the before-mentioned trusts, shall be good and valid notwithstanding her coverture. If the said party of the second part should die before the said party of the first part and there should be issue of the said marriage, then in trust to receive the said interest, profits, and dividends and pay the same over from time to time to the said party of the first part during his life for the support of himself and the maintenance and education of his children, without his being subject to any account as aforesaid; and after his death in trust for any child or children of the said marriage, in equal shares; and if the said Annis should survive the said John, and there be issue of the said marriage, then to pay over the same to the said Annis, during her life, for her maintenance, and the support and education of the said children, and without her being liable to any account for the same; and after her death, in trust for the child or children of the said marriage, in equal shares; and if there shall be no child or children of the said marriage, then, upon the death of the said John R. Thomson, or Annis his wife, in trust, to assign and deliver the said securities, and all moneys remaining due to the one who shall survive, to his or her own uses."

"And it is further agreed and covenanted by and between the parties aforesaid that it may be lawful for the said John R. Thomson to act as the agent of the parties aforesaid in all the matters aforesaid by the permission and under the control, if need be, of the said trustee, and to change and from time to time alter the said

securities as occasion may require, and take new securities in their stead, so as that the fund, as aforesaid settled, shall always be kept good. And it is also hereby further agreed and covenanted by and between all the said parties that the said trustee shall not be held guilty of breach of trust, although he does not act personally in the premises, unless he be expressly desired and requested so to do by one of the other parties hereto or those claiming under them, and that he shall not in any manner be held liable as trustee unless for acts of willful neglect or misconduct."

The plaintiffs and the defendant were merchants residing in Canton, in China, previous to 25 March, 1825, when the defendant returned to the United States, leaving an agent, Rodney Fisher, in Canton, with full powers to transact his business and to bind him by commercial contracts, and who was introduced to the plaintiffs as his agent by the defendant. Very large loans were made to the agent of the defendant by the plaintiffs, which were employed in loading the vessels of Edward Thomson, the goods being pledged to pay the loans at Philadelphia, and the shipments so made being for the use of Edward Thomson. Edward Thomson was without credit or friends in Canton, and the credit of his son, John R. Thomson, was thus employed by his agent to load the ships, the defendant's compensation consisting of the commissions on the transactions.

On 22 November, 1825, Mr. Fisher, as the agent of the defendant, borrowed of the plaintiffs \$30,000, on the pledge of an invoice of goods valued at about \$42,000, and on the second of December, 1825, \$33,000 more were borrowed on the pledge of another invoice valued at upwards of \$44,000, together exceeding more than \$63,000 on pledges of goods exceeding, in invoice amount, \$86,000. Besides these loans, the defendant obtained others in China, where he also owed some other debts, inconsiderable in amount, and after his return home, he signed his father's *respondentia* bonds for \$200,000. On all these loans and *respondentia* there were large sums lost; the goods pledged

to the plaintiffs did not sell for half the invoice prices, and the defendant lost moreover upwards of \$20,000 by his father's failure. He was not possessed of any real estate, mortgages, public stock, or other productive property, and whatever he was worth, if anything, was involved in his father's affairs.

On 19 November, 1825, Edward Thomson's insolvency was made public. On 19 December, 1825, the defendant, having arrived from Canton in this country on 1 June of that year, and soon after made an engagement to be married with Annis, the daughter of Richard Stockton, Esq., submitted a statement of his affairs to Mr. Stockton with a view to the marriage settlement before stated, which was executed the same day.

Statement by John R. Thomson, made previous to settlement:

"I have no personal debts except to a small amount in common course of business and living. I am surety for my father in a *respondentia* bond to Messrs. Schott & Lippincott, in a penal sum of \$200,000. If the goods which are pledged sell reasonably well, there can be no loss, for the freight on these goods, the commissions in China, and the premium on dollars on the outward investment all tend to enhance the security, and such is the opinion of Mr. Schott, expressed to me in a conversation on this subject; there can, therefore, be no demand on me. Upon no fair principle of calculation could the loss, if it should happen, be more than \$20,000, and I consider myself worth that amount, if not more, in addition to the sum proposed to be settled."

"JOHN R. THOMSON"

"December 19, 1825"

Endorsed by Richard Stockton: "Statement made to the trustee by J.R. Thomson, as the basis of the settlement, and upon which it was made. R.S."

The marriage took place 28 December, 1825. But during the life of Richard Stockton, the settlement was never acknowledged or registered, nor was the \$40,000

in productive stock ever provided, as the settlement stipulated, by the defendant, who pleaded inability to do so, from insolvency. After Mr. Stockton's death and shortly before judgment confessed by defendant, for the balance remaining due to the plaintiffs, the defendant delivered to Robert Stockton, the eldest son of Richard Stockton, deceased, two promissory notes, together for \$9,500, one of which, for \$4,500, was of doubtful worth.

Of the \$60,000 and upwards due by the defendant to the plaintiffs, a principal sum of about \$12,000 remaining due, suits were brought for the same against him in Pennsylvania, where he resided, and in New Jersey, where he settled at the time of his marriage, in both of which suits judgments were confessed for the sum claimed.

On 3 June, 1830, the following agreements relative to the case were entered into by the counsel for the plaintiffs and for the defendant.

"Whereas the above-named plaintiffs did recover, on 26 November, 1827, against the said John R. Thomson the sum of \$20,929.07, damages, besides costs of suit, and whereas the said plaintiffs allege that the said John R. Thomson has the means of satisfying said judgment and costs, and the said John R. Thomson denies his ability to pay the same and requires that the proof thereof may be tried by a jury, and an issue for the trial thereof has been agreed upon between the parties in the Circuit Court of the United States for the Eastern District of Pennsylvania, to April sessions, 1830, it is hereby ordered and agreed that the action as above stated be entered, and that the said John R. Thomson cause an appearance to be entered for him to the same, and that said plaintiffs declare, of the said term, of a discourse had and moved between the said plaintiffs and the said defendant, of and concerning whether the said defendant has the means, by the property in his marriage settlement or otherwise, of satisfying the judgment aforesaid, and that the said defendant, in consideration of a mutual promise on the part of the said plaintiffs to him made, did promise to pay to the said plaintiffs the sum of \$25,000,

in case he, the said defendant, has the means or ability of satisfying the judgment aforesaid, so that this said issue may be tried by the country. And it is further ordered and agreed that the circumstances of the said mutual promises, and of the affirmations and assertions laid in the declaration, shall be confessed, so that the said issue shall be tried on the merits, and that the costs of the suit shall follow the verdict, but that the said verdict shall give no title to either party to recover from the other the sum laid in the declaration. The merits to be tried without regard to form, and either party to be at liberty, under the direction of the court, to modify or change the pleadings, so as to facilitate such trial on the merits."

"Whereas, a feigned issue has been agreed upon between the parties in this case for the purpose of ascertaining by law whether the defendant, John R. Thomson, has the means, by the property in his marriage settlement or otherwise of satisfying the judgment recovered against him in this Court, to October sessions, 1826, No. 18, now it is hereby agreed to be the understanding of the parties to this suit that if the plaintiffs recover, that the liability of the security from said defendant shall be to the extent of the property actually settled by said defendant on his then intended wife, by virtue of a marriage settlement, dated the ___ day of December, 1825. And if judgment shall be for the defendant, that the said property contained in said settlement shall be entirely discharged, and the security entered as above stated entirely at an end, either party to be at liberty to carry the case, according to established regulations, to the Supreme Court of the United States for determination."

The case was tried at the April term of the circuit court in 1831, under these agreements, and a verdict, under the charge of the court, was rendered for the defendant. The plaintiffs excepted to this charge and prosecuted this writ of error. The whole of the charge of the court was inserted in the bill of exceptions and brought up with the record. The facts of the case as made out in evidence, according to the views of the court, are stated particularly in the charge to the jury.

The charge was as follows:

"The nominal parties are the plaintiffs and the defendant. The real parties are the plaintiffs and the defendant's wife. The nominal question is whether the defendant has any property. The real question is whether the property he owned in December 1825, passed to Richard Stockton, father and trustee of Mrs. Thomson, for her use, or whether it remained in the defendant, on account of the legal inefficacy of the marriage agreement to divest him of it and vest it according to that agreement. If it was operative in law, the house furniture and fund in hands of Robert Stockton belong to him in trust for the uses of the agreement. If not, then the law deems J.R. Thomson to be the legal owner, in trust for his creditors, of whom the plaintiffs seem to be the only ones. He remains the owner not because the agreement is not binding on him, but because, under the circumstances of the case, his indebtedness to the plaintiffs put it out of his power to so divest himself of it as to prevent his creditors from considering it his, so far as to be a fund for the payment of their debt, and this is the only question we have to settle."

"From the evidence, the plaintiffs' debt is a fair and valid one as between them and defendant; between him and Mr. Fisher, it is not our province to inquire; that depends, perhaps, on the evidence of authority which the latter can produce; but his evidence is sufficient for the plaintiffs to show a debt existing at the time of the marriage agreement. The judgments confessed by Thomson are evidence not only against him, but as they may affect the interest of his wife in the property in question, to show the indebtedness of Thomson at the time of the agreement. [*Hinde v. Longworth*](#), 11 Wheat. 210. Taking the judgment in connection with the testimony of Mr. Fisher, you will probably think the plaintiffs' case so far made out as to establish the existence of a valid legal debt due plaintiffs by defendant at the time of the marriage settlement, and no evidence being given to impeach the claim, we think, in point of law, it is so unless you feel at liberty to discredit Mr. Fisher; though Mrs. Thomson is no party to the judgment, it is evidence to affect her claim. "

"This brings us to the main question of the validity of the marriage settlement, on which the cause must turn. It is good between the parties, and good as to all the world unless it is liable to impeachment for fraud, which is of two kinds, fraud in fact and fraud in law. The first is an intention or design to defraud, delay, injure, or prevent creditors from receiving their just debts by a sale, deed, settlement, or agreement by which the property of a debtor is withdrawn, or attempted to be withdrawn, from their reach. The English statute of 13 Eliz. declares all such acts null and void as to creditors; this statute is in force here, and you will consider it as having the same effect in this cause as a law of New Jersey; the common law makes the same declaration, and if the evidence brings this case within it, your verdict must be for the plaintiff. Proof of fraud may be made out by direct evidence or may be inferred from such circumstances as will justify that inference, but a jury ought never to presume it without either; you ought to be satisfied that the facts before you indicate and reasonably prove the existence of that dishonest fraudulent intention, which brings the case within the true spirit and meaning of the law. A mere doubt or suspicion of the fairness of the transaction ought not to be sufficient to lead to the finding of any act to be fraudulent unless the conduct and situation of the parties, and the effects intended to be produced by the act, appear inconsistent with their integrity and admit of no reasonable interpretation but meditated fraud, to be effected by the agreement, sale, or deed; on this subject, the law does not remain to be settled by this Court; it is laid down by Judge Washington and adopted by the Supreme Court in the case of [*Conrad v. Nicoll*](#), 4 Pet. 295, and must be considered as binding on court and jury in deciding on this part of the case."

"To taint a transaction with fraud, both parties must concur in the illegal design; it is not enough to prove fraud in the debtor; he may lawfully sell his property with the direct intention of defrauding his creditors, or prefer one creditor to another, but unless the purchaser or preferred creditor receives the property with the same fraudulent design, the contract is

valid against other creditors or purchasers who may be injured by the transaction. The declarations or admissions of the debtor as to the object intended to be affected are evidence to contradict his answer to a bill in chancery, brought to annul the act alleged to be fraudulent, but not to defeat the title of the grantee or person claiming under it or to have a bearing on the whole case. [Venable v. Bank of the United States](#), 2 Pet. 119-120; S.P. 2 Halst. 173-174. Before you can pronounce this marriage agreement void and inoperative on the ground of actual fraud, you must be satisfied not only that the defendant made it with design to defraud his creditors, but also that Mrs. Thomson and her father and trustee, Mr. Richard Stockton, participated and concurred in the fraud intended; if they were innocent of the combination, it would be harsh and cruel in the extreme to visit on her the serious consequence of her intended husband's acts, and as inconsistent with law as justice."

"The facts of the case are neither complicated or contradictory, affording evidence much more clear and satisfactory than usually appears in such cases; it appears that John R. Thomson, after residing some time in Canton, left it in March, 1825, and returned to this place, in June following; that he paid his addresses to Miss Stockton, during the summer, contracted an engagement of marriage with her, and contemplated making a settlement upon her as early as September. That the marriage articles were executed on 19 December, and the marriage solemnized a few days afterwards, or perhaps sooner; he built a house on the lot mentioned in the agreement at an expense of \$13,000, furnished it at the expense of \$5,000, but invested no part of the \$40,000, during the lifetime of Mr. Stockton. In September, 1829, he put into the hands of Captain Robert Stockton, who succeeded his father in the trust, securities to the amount of \$9,500, on account of the sum to be invested pursuant to the settlement. From the evidence of Mr. Fisher and Mr. Mackie, it appears that Mr. Thomson was worth, say in December, 1825, about \$80,000 or \$90,000 in money and personal property, and

Page 32 U. S. 359

owed \$70,500 of which \$7,500 were, on his own account, due in Canton, and paid by Mr. Fisher. The residue was the \$63,000 borrowed by Mr. Fisher, on 22

November and 2 December, 1825, from the plaintiffs, on the credit and on the alleged authority of Mr. Thomson, but entirely for the use of his father, Edward Thomson, in order to complete the cargoes of his ships, then at Canton, short of funds. We have no evidence of any other debts which would materially diminish the sum which he was estimated to be worth. This large debt was contracted not by any specific, but general directions or orders; it was unknown to him, till the spring of 1826 that such a debt existed, and therefore could have been in his contemplation when the marriage articles were executed; they could not have been entered into for the purpose of defrauding the plaintiffs, and he appears to have had no other creditors unless those who were paid by Mr. Fisher, in Canton, out of Thomson's funds in his hands. The security given to the plaintiffs exceeded the amount of the *respondentia* bond \$23,300, which may fairly be presumed to have been invested in the invoices pledged to the plaintiffs, out of his own funds, as there is no evidence that this sum was raised by loan, on the goods purchased on credit. This, added to the other debts, amounting to \$7,548, makes \$30,748, which would seem to have been raised without contracting a debt. Defendant pledged \$23,300 of this to secure the plaintiffs for a loan made for the use of Edward Thomson, and made Thomson personally liable in the bond. If the contracting a debt in this manner, by which there could be no profit but commission, and might be attended with heavy loss, was intentional fraud, then you will judge whom it could have been intended to defraud, Magniac or Thomson; if there were any part of the debt lost, it must fall on the latter; the former could not suffer unless the proceeds of the two invoices produced less than \$63,000, and Thomson became insolvent; if, under such circumstances, you find that there was meditated fraud, it will

Page 32 U. S. 360

be hard to discover a motive which could operate on the mind of the defendant, to his own benefit, or injury of the plaintiffs."

"This debt not being contracted personally by Mr. Thomson or his special directions, it would be difficult to infer any fraud in him in borrowing the money, and still more so in his agent, Mr. Fisher; it cannot well be doubted that it was the

intention of the one, in conferring the authority, and of the other, in executing it, to comply with every stipulation for repayment, or that, in entering into this agreement of marriage, all parties were ignorant of the existence of the debt. The mortgages of the invoices of \$86,000 for security, is most powerful evidence to negative fraud of any kind; these are the most material and probably all the facts of the case necessary for your consideration of the question of fraud in fact; you will apply the law, as read and stated to you, to the evidence and decide according to your convictions of the justice of the case. As a question of fact, it is for your exclusive decision; the court, however, thinks proper to say that in its opinion an inference of intentional fraud would be a very severe comment on the conduct of the parties. If, however, you should be of opinion that there was such fraud attending this transaction as brings it within the legal principles laid down for your guide, you will find accordingly a verdict for the plaintiffs."

"Another part of the issue which you are to decide is whether the defendant has concealed, and has in his possession, disposal or command, any part of the property he owned in 1825, amounting to \$80,000 or \$90,000, which has been accounted for as by statement of Mr. Fisher and Mackie, leaving the sum of \$25,000 or \$26,000, which has been shown to be invested in the house, furniture, and securities in the hands of Captain Stockton; connecting this with the evidence of Mr. Norris, you will be able to decide whether defendant has any means of paying the plaintiffs' debt of which he has not given an account or which remain in his hands. In tracing through the evidence the conduct of the defendant towards the plaintiff in relation to this debt, you will discriminate between the deliberate design to defraud by secreting

Page 32 U. S. 361

property for his own use and losses incurred by casualties and want of prudence or discretion; on this part of the issue, you are to inquire only as to the property which he actually has in his possession or control, not into what he ought to have had, or what he has disposed of for any other use than his own, and will not take into consideration what has been expended or applied towards the marriage contract, that being the subject of the first inquiry, which is altogether distinct from

this."

"The next and most important question is whether the marriage contract is fraudulent in law, and for that reason void as against the plaintiffs; that is, although the intention of the parties was fair and honest, and the act done without any design to defraud, the policy of the law forbids its execution, and takes from it all legal efficacy as to the creditors of John R. Thomson. The deeds, gifts, grants, or other contracts which the law avoids are those made with intent to defraud, hinder, delay, or injure creditors, and in order to avoid them, both the party giving and the party receiving must be participating in the fraud. On this subject, the law is written and cannot be misunderstood. The 6th section of the statute, 13 Eliz., provides that the act shall not extend to any interest in lands or goods and chattels made on good consideration, *bona fide* lawfully conveyed or assured to any person not having, at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such fraud, covin or collusion. The words of the law require that both parties must concur in the fraud in order to bring the case within its provisions, and such has been its settled judicial exposition for 260 years."

"There are in law two kinds of considerations; good, which is natural love and affection; and valuable, which is money or marriage. The word 'good' is used in this law as applied to cases which it does not mean to embrace, but from the evident meaning and object of the law to protect creditors from the disposition by debtors of their property with intent to defraud them, and from dispositions which might produce that effect, by conveying it to their wives, children, relations, or friends; all courts, both of law and equity, have considered the word 'good' as meaning valuable consideration. "

Page 32 U. S. 362

"You will perceive that the law as thus expounded embraces three kinds of conveyances:"

"1. Those made with the intention in both parties to defraud creditors; these are void, whether made with or without consideration, good or valuable, not only on

account of the covin, or collusion, but as exempted from the saving of the sixth section, not being *bona fide*. "

"2. Voluntary, made for good consideration, but tending to defraud creditors; if they are permitted to have a legal operation to vest the property conveyed, the policy of the law makes them void for legal fraud -- though there is no fraud in fact, the fraud in law being deemed equivalent to it."

"3. For valuable consideration, in good faith, without notice by the person receiving the conveyance, of any fraud, covin, or collusion by the grantor to defraud his creditors; these are excepted from the operation of the law before referred to; they are good and valid at common law to pass the property conveyed, and purchasers under such conveyances are entitled to and receive the protection of all courts of justice."

"From what has already been given you in charge on the subject of actual fraud, you will be enabled to decide whether this case comes within the first class of cases of intentional fraud in both parties to the marriage contract; if you are not satisfied that this contract is of this character, then it cannot fall within the second class of voluntary conveyances. If it was made in contemplation of marriage, it was made on a valuable consideration, and puts the intended wife on the footing of a purchaser for money, and not of a voluntary grantee or donee for the mere consideration of love and affection. She is not to be considered in any court as a volunteer, but comes into court at least on an equality, both in law and equity, with any other parties whose claims are founded in money. You will not forget the difference between a provision for a wife and children before and after marriage; when there is no portion or money paid, it is the difference between a purchaser and a volunteer; for the former, the consideration is as valuable as the debt due a creditor, or the money received from a purchaser in the latter; it is, from its nature, merely voluntary; there can be no other than a good consideration for making it; there

exists, it is true, a moral obligation to provide for their support and comfort, but that moral obligation must yield to the legal one, which every man must observe towards those who have just claims on his property. In dispositions of property which take effect in the disposer's lifetime, as well as after his death, there is a golden rule which applies to all -- a man must be just before he is generous; this applies to all cases between volunteers, or those claiming merely by a voluntary disposition, made by deed or will, to those who have no legal claims on the person who makes it, on the one hand, and creditors and purchasers, on the other."

"But where conflicting claims between creditor and creditor, purchaser and purchaser, or purchaser and creditor arise in court, they are settled by other rules. The first inquiry as to them is whether one class has a legal right to the debt claimed, or the other to the thing claimed to be purchased, such as is recognized in a court of law; the second is whether that right has been so acquired as to be attended with such circumstances of fraud, accident, mistake, trust, inadequacy of price, or unfairness as will annul or modify it in a court of chancery, according to the established principle of courts of equity. Creditors have, as between them and the debtor, an undoubted right to so much of his estate as will pay their debts, but the debtor has a right, equally undoubted, of preferring one creditor to another or giving all his property to one; this is neither fraud in law or fact, in the absence of covin or collusion. A debtor may sell his whole estate, turn it into money, and distribute it among his creditors at his pleasure; those only who have liens on it can in either case have any resort to the property in the hands of a *bona fide* purchaser or creditor, who has fairly received it in payment of his debts. These are known principles of law, long settled and established by universal consent and adoption in our system of jurisprudence; they form rules of property and title on which the peace of society and security of rights essentially depend; they cannot be shaken by courts or juries without producing endless confusion, uncertainty, and want of confidence in the administration of the laws of the land. We will then apply them to the case under our

consideration in order to ascertain, by their bearing on its merits, whether it comes within the third class of cases, which, we have seen, are excepted from the provisions of the statute."

"A contract in consideration of a future marriage is of that nature which creates a legal and equitable obligation on the parties to perform it in good faith, according to its stipulations; the consideration is as good and valuable, in contemplation of the law, as if it was made on the loan or payment of money; if the contract is executed, the parties become purchasers; if it remains executory till after the marriage, they become creditors on its consummation or assume *pro tanto* the character and acquire the rights of both if executed only in part. They are entitled to the protection of all courts in the enjoyment of what is granted, and to their aid in enforcing the performance of what has been stipulated to be done, and where either party can rightfully call on a court of law or equity to compel the other to perform an act necessary to the execution of the contract, and the judgment or decree of the court would be given in his favor, a voluntary performance of the legal or equitable obligation would be equally valid. The consideration being valuable, if the contract, whether executed or executory, is made in good faith with one having no notice or knowledge of any fraud, covin, or collusion to defraud creditors, performance may be enforced, or voluntarily made and the contract carried into execution at any time, either in the whole or in part, as is in the power of the party, and whatever is so done will be as valid and binding between the parties and in relation to third persons as if the execution had been completed on its date. The law is express in referring to the time of the conveyance and assurance, and embraces not only perfect grants or gifts, but any estate or interest in lands, goods, and chattels, made, conveyed, or assured. On these principles, it is the opinion of the court that the evidence in this case brings the marriage contract within the sixth section of the law, excepting it from the operation of the first section unless you shall find that it was made, not *bona fide*, or with notice or knowledge of a fraud in John R. Thomson in entering into it, brought home to his intended wife, and that Thomson actually entered into it with such fraudulent, covinous or collusive intention. "

"If you do not find such want of good faith or existence of notice, then Mr. Richard Stockton must be considered at law as a purchaser for valuable consideration, *bona fide* and without notice, so far as the contract has at any time been proved to have been executed by Thomson, and his creditor, so far as remains to be executed, and Mrs. Thomson as having the same character in equity, and Captain Stockton as invested with all the rights, and standing, in all respects, in the situation of his father."

"The aspect in which these considerations present the case is a contest between Mr. Stockton and Mrs. Thomson, the one the legal and the other the equitable purchaser of the house, furniture, and securities from John R. Thomson, by the contract, and in consideration of the marriage, and the lot as the marriage portion, and the plaintiffs, his sole creditors. Thus they stood at the commencement of this suit, and as creditors at the time of the contract and consummation of the marriage, they, having performed their stipulation, had a perfect right to call on Thomson, both at law and equity, to perform his. If Mrs. Thomson is a purchaser, she is one of the most favored class; the consideration she has given is a valuable and as much to be valued as money; it is not necessary to consider it as more so; if she is invested with the acknowledged rights of a money purchaser, a conveyance of real or personal property made to her before marriage, by her intended husband, of real or personal estate, would be as valid and effectual, although he was in debt, as if he was not. If he had the legal title to the thing conveyed, and power to sell, the interest and beneficial use would vest in her, and her trustee, by the deed, as fully and completely, if the property had been held in trust for others, as if Thomson had a right as perfect in equity as at law, provided she had no notice of the trust. This is a universal principle, never questioned, and protects all *bona fide* purchasers for valuable consideration, without notice, before the money paid or the condition of the grant performed."

"The application of this well known and acknowledged rule of law to Mrs. Thomson does not make her a prerogative or a privileged purchaser; it only puts her on the footing of every other purchaser, from one who has the legal title, subject to

an unknown trust for the use of a third person. This case is of the strongest kind against the *cestui que trust*, if the plaintiffs can be so considered, and they cannot be placed in any attitude which can give them better rights than in that, for the debt was contracted with them but a few days before the date of the marriage articles, and in a quarter of the world so distant as to preclude the possibility of notice to other parties. In the common case of a trustee, conveying the legal estate to the injury of *cestui que trust*, the trust exists at the time of the conveyance, it is necessarily known to the trustee, and notice may be brought home to the purchaser, by direct or circumstantial evidence, as in all other cases; but in this it could be done by no possibility."

"When the law is so well settled as in the case of a conveyance by a trustee to one having no notice of the trust, it can have no effect to urge any arguments of hardship on the person injured; we could not change the law on the subject, if we would, and should violate our duty, not so to declare it. It is a hardship on a widow or an orphan, who has been defrauded by her trustee, in selling what is not his own, but theirs; but it is as great, if not a greater, hardship on the widow or orphan to be deprived of property which they have purchased and paid for by money earned by their industry, and deprived of that on the faith of which they have devoted their lives to a husband, and placed at his disposal their future happiness, and last cent. A loss must fall on one of two innocent sufferers, whose claims may be supposed equal in justice and equity; in such cases, the law leaves the property with the one who has acquired the legal title by fair purchase, in good faith, and without notice, and a creditor of a fraudulent debtor, who sells or settles on his intended wife property which he is bound both in law and equity to apply or pay his debts can on no principle be more favored in any court than the person whose property is unjustly conveyed by a trustee to pay his own debts, to rob one family in order to save another, or secure a provision for an expected one of his own. A creditor is nowhere more favored than the infant, the ward, the widow or orphan, whose property is in the hands of trustees, without lien or security, and subject to his disposition by deed or bill of sale. "

"The creditor of a deceased debtor has the same right to the payment of his debt out of his property as a living one; yet a sale of the personal property of a decedent by an executor, administrator, or trustee to pay his own debt is good against creditors, the widow, and next of kin, if made without notice or collusion, and no court of chancery will annul it; yet it is as much a breach of faith, as deep a violation of moral honesty, as to settle the same property on an intended wife, to whom he was under as high and imposing obligations to perform his contract of marriage, by paying the promised consideration on which it was solemnized, as to discharge a bond given for money lent or property purchased."

"These are general principles and rules of law which, we feel confident, are the preexisting law of this case, and as such lay them down to you as the legal rule for your verdict; we should make, instead of expounding the law, act as legislators of new rules, and not as judges, expositors and administrators of old and well established ones, in declaring that Mrs. Thomson is, in this case, to be viewed in a less favored light than a purchaser in consideration of money or property."

"The consideration of the contract on which this cause depends is both marriage and property; the value of the one cannot be, and the other has not been, ascertained in dollars, but we think the justice of this case can be attained without doing either; considered as a purchase made in good faith, and the purchase money paid without notice of any fraud by the intended husband, we know of no principle by which it can be declared void in a court of law; we know of no case in which a conveyance of real or personal property so made, has ever been, or, agreeable to legal principles, could be annulled and set aside on any reason founded on mere inadequacy or consideration. All that is required to render a conveyance valid at law, in that respect, is that there be some consideration, the amount is not material and cannot be inquired into, either as respects the grantor, his creditors, or subsequent purchasers of the same property, in the absence of actual and legal fraud in the grantor or notice of it to the grantee. The only resort of the parties who complain of any equitable fraud or other circumstances which would

invalidate it in equity is to those courts; they only can decide upon the inadequacy of a pecuniary fund or the equality of marriage to a given sum of money or value in property under the circumstances of the case. Cases may exist in which a court of chancery would compare and estimate them, for the relief of a creditor, a purchaser, or perhaps the party, in a strong and clear case of injustice; when such a case occurs, it will be time to give an opinion on it; as yet we know of no instance in which a court of chancery have set aside a purchase for a valuable consideration, or a marriage contract, when made *bona fide* and without notice of fraud or defect of title; those claiming under them have ever been the peculiar favorites of such courts, and their rights can never be disturbed unless in some extreme case of such a nature as to call for the application of old rules and principles to a new state of facts, which have never yet been presented to a chancellor."

"Truth is not to be elicited by forced comparisons and extravagant suppositions, or extracted from extreme cases of rare and barely possible occurrence; the rules of law have been settled to meet the common and ordinary occurrences of life, which come within the cognizance of courts of justice; extreme cases may arise, and though necessity may have no law, yet there are rules for all exigencies, but they are only to be applied when they arise; they differ much from those which regulate and govern the ordinary common contracts of society. The court perceives nothing in the one now under our examination which gives it any unusual features. At the time it was entered into, if you view the evidence as we do, Mr. Thomson, so far as he could judge, was abundantly able to make the stipulated provisions for his intended wife, without doing any injury to the plaintiffs or any other person; he has given evidence of losses enough to account for his inability to comply either with his contract with his wife or plaintiffs, but they were unforeseen at the time; they happened not by his dishonesty or even imprudence. An investment was made by his agent, without his knowledge; the money was borrowed; the purchase and shipment made by Mr. Fisher, in good faith, and in the exercise of sound discretion. But what cost \$86,300 in Canton, produced less, or

not more, than \$40,000 in Philadelphia; it has been a calamity by which the defendant has suffered and must suffer; his wife must lose \$30,000 of her settlement if the plaintiff lose \$12,000 of his debt; even admitting their equities to be equal, she has a legal advantage which no court can take from her, unless her conduct can be impeached for actual or legal fraud; it would be as unjust, as illegal and inequitable, to visit alone on her the misfortunes which attended her husband's affairs."

"Considering Mrs. Thomson, then, as a purchaser under the marriage articles, we are decidedly of opinion that there is no legal fraud attending the transaction which would invalidate it in a court of law, nor any matter given in evidence which would impair its obligation in a court of equity; the nature of the issue seems to us to require both views to be taken. If Mrs. Thomson cannot be viewed as the purchaser of the property contracted to be invested for her use, she is certainly a fair and honest creditor, from the time of its execution, if not from the time of the proposed settlement in August, after the engagement of marriage was made; if she was a creditor on 19 December, Thomson had a right to prefer her in preference to any other creditor, to the extent of his whole property, whenever he could realize or reduce it into possession. The mere priority of the plaintiff's debt in point of time gave him no such legal or equitable priority of payment as to prevent the marriage agreement from having a legal efficacy on the parties, though Mr. Fisher had a previous authority to contract it, it could not cut out the inchoate rights of Mrs. Thomson, by the engagement and proposed settlement in the summer of 1825, which, you may fairly infer, from the agreement, was in the course of execution, by Thomson having begun to build a house on the lot of which Mr. Stockton was to stand seized in trust, before the date of the articles, and the deposition of Captain Stockton is that it was built in 1825 and 1826. These circumstances may be thrown out of view on both sides, and the rights of the respective parties be tested at the time of the consummation of their respective contracts; that of the plaintiffs, on 22 November and 2 December, and Mrs. Thomson's on the 19th; if they were both fair creditors,

Mr. Thomson had a clear undoubted right to prefer either, and pay the whole debt out of any property on which the other had no lien, and we are of opinion, that she might be considered as a fair creditor, to the amount of the promised settlement, made under circumstances which, we think, wholly insufficient to justify its being rescinded, in whole or in part, in a court of law or chancery, unless it was attended with actual fraud."

"If it had comprehended his whole estate, and the certain consequence of being carried into effect, or the intention of the parties had been to exclude the plaintiff from the payment of his debts under cover of the agreement, on the equity side of the court, we would give him relief. But this case seems to us to have no such character; the intervention of unexpected losses alone, and neither the effect of the agreement nor the intention of the parties has produced the existing state of things, which, if not changed by your verdict and our judgment, will leave the parties thus: the plaintiff's debt was nominally \$63,000; the sum actually received by Mr. Fisher \$61,002, bearing an interest of ___ percent, of which he has received all now due, principal and interest, except about \$12,000; that of Mrs. Thomson, estimating the house and furniture at \$18,000, amounts to \$58,000, of which there is yet due \$35,000, if Morris' debt is not good, or \$30,500 if it is good, besides interest from December, 1825. Though this inequality of loss might and would not be of any importance to her in a court of law, it would be a powerful circumstance in a court of equity, to which the plaintiff would apply for relief from alleged hardship. The time at which the contract was made and the circumstances then attending it, connected with the situation of the parties at that time, furnish the proper criteria by which to ascertain their respective rights; if they have changed by events happening since and are to be governed by their situation at the commencement of the suit, it is important to view the change of the marriage contract. Instead of withdrawing the \$40,000, to be invested for the use of Mrs. Thomson, it has been reduced to \$5,000 certain, or \$9,500

contingent; had this been the original stipulation, it would hardly have been deemed an unreasonable or disproportionate consideration of the marriage; of the sum promised and interest she will in no event receive more than one-fifth, and possibly only one-tenth, from the wreck of Mr. Thomson's property, while the plaintiff has received more than the half of what remained due him, after deducting the proceeds of the two invoices, of which no part went to Thomson or his wife, but the whole was applied to the plaintiff. It is also an important matter, as it affects the character of the two contracts at the time they were made, that Thomson gave no security and pledged no specific fund for the investment of \$40,000, but as security for the repayment of an actual loan of \$61,002, the plaintiff received as security goods of which the prime cost was \$86,300."

"This view of the merits of this cause seems to the court to be sufficient for the decision of the points directly at issue; others have been made and ably argued by counsel on both sides, but we are not disposed to trouble you with a discussion not necessary to a correct decision of the question between the parties. The cause has been tedious and its examination sufficiently laborious; we shall not, therefore, investigate the doctrine of voluntary conveyances or contracts of marriage made after it has been consummated, they not partaking of the character of purchases in consideration of money or marriage. In the first class of cases, the existence of debts due by the grantor, at the time of the deed or contract, has a very important, if not decisive, bearing on their validity as to creditors; the law is not clearly settled so as to their effect on subsequent purchasers. But it has never been decided that a deed conveying to a *bona fide* purchaser, or an intended wife, is in any manner impaired by the mere existence of preexisting debts, and to this class of cases alone, it is necessary for you or the court to direct their attention."

"The rules which we have expounded to you as controlling this cause are such as are founded on principles which are assented to by counsel on both sides, they differing only in their application; there can indeed be no other question; if

Mrs. Thomson is to be considered as a fair purchaser without notice or an honest creditor, her claims can only be affected by fraud in a court of law or such a case of equitable jurisdiction as could induce a court to annul a conveyance, made in consideration of money or as security for a debt, or to enjoin the assertion of any right accruing or claiming under it. The importance of the principle involved in this controversy made it our duty to examine it at large, and as the sum in dispute authorizes either party to take the cause to the Supreme Court for revision, we have given an opinion explicitly, so that the law may be fairly settled. We conclude, then, with instructing you that a settlement made before marriage makes the intended wife a purchaser; if agreed to be made, she is a creditor, and protected in the enjoyment of the thing settled, and entitled to the means of enforcing what is executory if the transaction was *bona fide* and without notice or fraud. The plaintiffs have made an objection to the operation of this deed for the want of evidence of delivery; this is a question for you to decide; the evidence is sufficient to prove it if you believe the witnesses; the building and furnishing the house are facts tending very strongly to prove the delivery in a satisfactory manner; the law on this subject is well settled by the Supreme Court in [Carver v. Astor](#), 4 Pet. 23, [29 U. S. 28](#) , [29 U. S. 82](#) ; you will apply it to this case."

"It has been said that the contract of settlement has been abandoned; it is not to be presumed, and we think the facts given in evidence do not amount to it; every act contemplated to be done by either party has been performed except making up the investment; the omission to complete it is not, in itself, sufficient to authorize you to find that the whole contract has been rescinded; so far as it has been executed, it is not open to any presumption of the kind, and the allegation of abandonment seems to be inconsistent with the charge of alleged fraudulent intention to defraud the plaintiffs. You may find, if you are satisfied with the fact, that the payment of the balance of the \$40,000 has been waived by consent of the parties, but this can have no effect on the investment actually made. The nondelivery of the securities for the \$9,500 till near the time when

judgment was rendered in New Jersey and the omission to record the marriage articles have been relied on in aid of the presumption of abandonment; but under the circumstances of the case, we do not think they conduce to prove it (the case last referred to seems to settle this point, [29 U. S. 4](#) Pet. 24, [29 U. S. 98](#) -99), and nothing appears from which an inference can be drawn that Mrs. Thomson, for whose benefit this contract was made, has done or consented to any act which could impair her rights under it; the omissions of her trustee to enforce the payment of the money, or to record the deed, cannot be deemed a waiver by her. If the trustee had done any acts inconsistent with the agreement, it could not affect the legal validity of her rights, and the acts of a parent will not be construed to be so unless clearly intended. 4 Pet. [29 U. S. 93](#) , [29 U. S. 95](#) ."

"The court has been requested to charge you that in point of law the covenant on the part of Mr. Richard Stockton to stand seized to uses operated as an immediate conveyance to his daughter before marriage, and that by the marriage, Thomson became the owner of the furniture in his own right, and had the exclusive use of the house and lot, unencumbered with the trusts of the agreement. By the covenant contained in that agreement, Mr. Stockton was not to stand seized to the use of his daughter till after the marriage; if it is the understanding of the plaintiffs' counsel that there is any evidence of any other covenant than this, we are unable to perceive it. The deposition of Captain Stockton is positive that his father did not convey, but covenanted to stand seized of said lot (prout deed); this does not even conduce to prove there was any deed independent of the marriage articles, and evidently refers to it, which the court instruct and charge you, as matter of law, does not operate, by the statute of uses, 27 Hen. VIII, to pass the legal estate to the lot, or any other property referred to in the agreement, to Mrs. Thomson or the defendant. It remained in Richard Stockton during his lifetime, devolved by his death on his heir-at-law, Captain Stockton, and now remains in him on a trust executory; it never was and is not now one executed by that statute. It is unnecessary to explain to you the reasons of this opinion, as it would perplex your consideration of the case with a dry detail of abstruse

principles neither amusing or instructing to any persons except those whose professional or judicial duty may lead them to the investigation; as a sheer question of law, you will probably not be disposed to investigate it for yourselves."

"The court is also requested to charge you on three other points of law."

"1. That the expenditure of \$5,000 in furnishing the house is *per se* fraudulent on creditors; we think not; furniture is part of the marriage contract, to be provided by Thomson in a suitable manner, as he should think fit. He had a discretion which he might exercise in a reasonable manner, according to their station and associations in life, proportioned to the kind of house and extent of income; the trustee or wife could not, in law or equity, compel Thomson to furnish it extravagantly or at useless and wanton expense, and if he should do it voluntarily, it would not be within the true spirit and meaning of the marriage articles, and might be deemed a legal fraud on creditors as to the excess. But before we can say that it is a fraud in law to expend \$5,000 in furnishing a house costing \$13,000, and the establishment to be supported by the income of an investment of \$40,000 in productive funds, we must be satisfied that it is, at the first blush, an extravagant and unwarranted expenditure under all the circumstances in evidence, and to an extent indicating some fraudulent or other motive unconnected with the fair execution of the contract, of which we are not satisfied, and therefore cannot charge you as requested by the plaintiff's counsel, there being no clear abuse of the discretion confided by the contract to Mr. Thomson. A less expenditure on both house and furniture would have been more prudent and discreet in the situation of the parties in 1826, when the house was finished; something could have been saved for investment, if less expense had been incurred, and \$8000 or \$10,000 been made productive. Had this been done, there could have been little ground of complaint by a creditor; but as to him it was immaterial how the money was expended; his only concern was in the amount, not the objects, of the expenditure, so that they were according to the terms of the agreement; whether a given sum was applied to one object or the other or fairly proportioned

among them affected only the parties, not creditors."

"2. We are next asked to charge you that the delivery of the notes to Captain Stockton, in September 1829 was a fraud; if it was done in order to comply, in part, with the agreement, it was not so; if it was colorable, made with the intention of covering and concealing so much, under pretense of the marriage articles, for Thomson's use, and so received by the trustee, it was legally fraudulent as to creditors, but if delivered with such intention and not so accepted, then Captain Stockton might not only fairly apply it to the trust fund, but was bound to do so. Though it may have been done on the eve of the judgment confessed in New Jersey, that would make no difference, it being to carry into effect the agreement of December, 1825; had it been to make a new settlement, after marriage, if it was in consideration of a portion or property, it would not have been fraudulent *per se*, and the time which intervenes between the making provision for a wife and the contracting the debt or obtaining a judgment against the husband is not a matter which *per se* makes it a fraud; it may or may not be suspicious, and connected with other circumstances as evidence of it. 4 Wheat. [17 U. S. 506508](#) ."

"The remaining point on which the charge of the court is requested is that the marriage agreement is void because not recorded within the time required by the law of New Jersey for recording deeds. The covenant to stand seized to the uses declared would come within this law if the uses were executed by the statute, so as to make it an actual conveyance or deed passing the legal estate, but being executory, it is only a covenant giving an equitable estate to those for whom the trust was created and continues, and not a deed. But considering it as a deed, the want of recording does not make it void as between the parties, though it would become void as to the creditors (perhaps) and purchasers from Richard Stockton without notice; but the omission to record it is no fraud on plaintiff, and cannot affect him; not being void as between the parties, it gives to John R. Thomson no other estate or interest but such as arises from the trust; he cannot be entitled to any legal estate or interest under it incompatible with the nature and terms and objects of the trust; our instruction,

therefore, is that the marriage contract is not void for want of being recorded in time."

"The principles of law which have been thus expounded to you as the guides to your verdict are all which are deemed by the court or counsel to be applicable to the merits of this case or necessary to be understood in order to decide it correctly; they form what in our judgment is the preexisting law of the case, and have been extracted from judicial decisions which afford to our minds conclusive evidence of their wisdom and justice. The rules laid down are not new ones either here or in that country which is the source of our jurisprudence and to whose judicial tribunals the wisest and best judges will look without any fear of foreign influence -- to some with veneration and to all with respect, as the expositors of the same common law which originated there and, adopted in this country, is the source of national pride to both as a system equally distinguished for its wisdom and public benefits. It has not been thought necessary to cite to you all the particular cases in which judges have established these principles or refer you to the time of their application as the nature of the cases decided may have led to their development; this is more proper in courts of error, or in deciding in others questions referred solely to the court. The course pursued saves you much time and relieves your minds from much perplexity; it does not produce an injury to the parties; it saves you from a comparison between the character of the courts and judges who may have given judgments or opinions, settling and declaring the rules of the common law or the construction of statutes. Whether we have, in forming our judgment as to the law of this case, drawn from the old and pure fountains of jurisprudence or the muddy rivulets which flow from them need only be decided by that tribunal to whom none appeal without full confidence that it will in justice give such judgment as will correct all the errors of inferior courts. You will not be willing to confide more in your own judgment, to correct any mistakes which this court may have committed in the instructions it has given you than in that of the Supreme Court, to whom either party may submit this cause. Let our judgment be what it may as to the law, it can do harm to no one without their sanction; with

their approbation, a safe rule of titles and property will be established; your judgment might not lead to one so sound or permanent. Much of what you have heard has been repeated from the adjudications of that court, much from those of England, their judges, and chancellors, whose judgments, decrees, and opinions have been carefully reviewed and approved by the pure and eminent jurists who have presided in our own courts. If, in following the path which it has pursued in the administration of justice, this court looks abroad as well as at home for light and knowledge to guide our course of legal investigation, it has been and will continue to be done without the fear of being misled by example or the self-reproach of adopting in our, or inculcating in your, minds principles unsound in law or dangerous in their moral tendency. "

Page 32 U. S. 389

MR. JUSTICE STORY delivered the opinion of the Court.

The original action was a feigned issue between the plaintiffs, who are creditors, and the defendant, to try the question, whether he is able to pay the debt due to them, and this depends upon the validity of certain articles of settlement made in contemplation of a marriage between the defendant and Miss Annis Stockton, daughter of the late

Page 32 U. S. 390

Richard Stockton, Esq., stated in the case. The verdict in the court below was for the defendant, and judgment having been rendered thereon accordingly, the present writ of error is brought to revise that judgment upon a bill of exceptions taken to the charge of the court at the trial.

The whole charge of the court is spread upon the record (a practice which this Court has uniformly discountenanced and which, we trust, a rule made at the last term will effectually suppress), and the question now is whether that charge contains any erroneous statement of the law, for as to the comments of the court upon the evidence, it is almost unnecessary to say, after what was said by this Court in [Carver v. Astor](#), 4 Pet. 80-81, that we have nothing to do with them. In

examining the charge for the purpose of ascertaining its correctness in point of law, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages and to decide upon them without attending to the context or without incorporating such qualifications and explanations as naturally flow from the language of other parts of the charge. In short, we are to construe the whole, as it must have been understood both by the court and the jury at the time when it was delivered.

The material facts are as follows:

The plaintiffs and the defendant were resident merchants in China, and the defendant left it in March, 1825, to visit America. In the summer of that year, he paid his addresses to Miss Stockton, then resident with her father in New Jersey, by whom his addresses were accepted, and in contemplation of marriage, on 19 December of the same year, the articles of marriage settlement referred to were executed. They purport to be articles of agreement and covenant between the defendant of the first part, Miss Annis Stockton of the second part, and Richard Stockton, father and trustee of Miss Stockton, of the third part. By these articles, after reciting the intended marriage and that Richard Stockton, the father, had promised to give a certain lot of land (described in the articles) to his daughter, upon which the defendant, Thomson, had begun to build a house, it is stated that R. Stockton covenants, in consideration of the

Page 32 U. S. 391

said marriage and his love and affection for his daughter, that from the time of the marriage, he will stand seized of the lot and premises, in trust to permit the defendant and Annis his wife to live in and occupy the same, and if they do not think proper so to do, then to let out the premises on lease, and receive the rents and profits and pay over the same to the said Annis during the joint lives of herself and her husband (the defendant); if the defendant should survive his said wife and have issue by her, then in trust to permit him during his life to inhabit and occupy the premises if he should elect so to do, and to pay over the rents and profits to him for the support of himself and his family, without his (the defendant's) being

accountable therefor, and after his death in trust for the child or children of the marriage in equal shares, as tenants in common, and if no children, then upon the death of either the husband or the wife, to convey the premises to the survivor in fee simple. By the same instrument, the defendant covenants that if the marriage should take effect, and in consideration thereof, he will, with all convenient speed, build and furnish the house in a suitable manner as he shall judge fit and proper, and that the erections, improvements, and furniture shall be subject to and included in the trust. And further that he will, in the space of a year from the marriage, place out at good security in stock or otherwise the sum of \$40,000, and hand over and assign the evidences thereof to the trustee, who shall hold the same in trust to receive the interest, profits, and dividends thereof for the wife during the joint lives of herself and her husband. And if she should die before her husband, and there should be issue of the marriage, then in trust to receive the interest, profits, and dividends and pay the same to the husband during his life for the support and maintenance of himself and children, without any account, and after his death in trust for the children of the marriage. A similar provision is made in case of the survivorship of the wife, and if no children, then the trustee is to assign and deliver the securities and moneys remaining due to the survivor, to his or her own use.

Such are the most material clauses of the marriage articles. Before the execution of them, the defendant made out a

Page 32 U. S. 392

written statement of his pecuniary circumstances in which he states that he owes no personal debts except to a small amount, in the common course of business; that he is surety for his father in a *respondentia* bond to Messrs. Schott & Lippincott, in the penal sum of \$200,000, upon which there was a pledge of goods supposed to be sufficient to discharge the bond, and if any loss should accrue, it could not be more than \$20,000, and that he considered himself worth that amount, if not more, in addition to the sum proposed to be settled.

From the testimony in the case, which is stated in the charge, it appears that the marriage was consummated; that the defendant built the house on the lot mentioned in the articles at an expense of \$13,000, and furnished it at the expense of \$5,000, but invested no part of the \$40,000, during the life of the trustee. It also appears that at the time of executing the articles, he was worth about \$80,000 or \$90,000 in money and personal property; that his agent in China, in November and December, 1825, borrowed of the plaintiffs \$63,000 on the pledge and security of property of the invoice value of \$86,000 and upwards, on the credit of the defendant, but entirely for the use of the defendant's father, in order to complete the cargoes of his ships, then at Canton, short of funds. The property arrived at a losing market, and the debt now due to the plaintiffs by the defendant grew out of their transactions, his father having failed on 19 November, 1825, but the existence of the loan contracted with the plaintiffs was not known to the defendant (though fully authorized to be made if necessary) until the spring of 1826.

The marriage articles were never recorded in New Jersey, where the land lies, until May, 1830, after the death of the trustee. In September, 1829, shortly before the plaintiffs obtained a judgment for their debt against the defendant, the defendant delivered over to Captain Robert Stockton, the son of the trustee, who succeeded him in the trust, securities to the amount of \$9,500, in account of the sum to be invested pursuant to the marriage articles.

Page 32 U. S. 393

Such are the material facts which appeared at the trial, and the question was whether, under all the circumstances, the marriage articles were void as a fraud upon creditors. With reference to this point, the learned judge who delivered the charge to the jury, made, among others, the following remarks:

"To taint a transaction with fraud, both parties must concur in the illegal design; it is not enough to prove fraud in the debtor; he may lawfully sell his property with the direct intention of defrauding his creditor, or prefer one creditor to another; but

unless the purchaser or preferred creditor receives the property with the same fraudulent design, the contract is valid against other creditors or purchasers, who may be injured by the transaction. . . . Before you can pronounce this marriage agreement void and inoperative, on the ground of actual fraud, you must be satisfied not only that the defendant made it with design to defraud his creditors, but also that Mrs. Thomson and her father and trustee, Mr. Richard Stockton, participated and concurred in the fraud intended. If they were innocent of the combination, it would be harsh and cruel in the extreme to visit on her the serious consequences of her intended husband's acts, and as inconsistent with law as justice. . . . The deeds, gifts, grants or other contracts which the law avoids are those made with intent to defraud, hinder, delay, or injure creditors, and in order to avoid them, both the party giving and the party receiving must participate in the fraud. . . . The words of the law (the statute of 13 Eliz., c. 5) require that both parties must concur in the fraud in order to bring the same within the provisions."

Nothing can be clearer both upon principle and authority, than the doctrine that to make an antenuptial settlement void as a fraud upon creditors, it is necessary that both parties should concur in or have cognizance of the intended fraud. If the settler alone intend a fraud, and the other party have no notice of it, but is innocent of it, she is not and cannot be affected by it. Marriage, in contemplation of the law, is not only a valuable consideration to support such a settlement, but is a consideration of the highest value, and from motives of the soundest policy, is upheld with a steady resolution. The

Page 32 U. S. 394

husband and wife, parties to such a contract, are therefore deemed in the highest sense purchasers for a valuable consideration, and so that it is *bona fide*, and without notice of fraud brought home to both sides, it becomes unimpeachable by creditors. Fraud may be imputable to the parties either by direct cooperation in the original design at the time of its concoction or by constructive cooperation, from notice of it, and carrying the design, after such notice, into execution.

The argument at the bar admits these principles to be incontrovertible. But it is supposed by the counsel for the plaintiffs in error that the charge contains a different and broader doctrine; that it requires active cooperation, preconcert, and participation in the original design of fraud, and that notice of it is not sufficient to avoid the settlement, although all the parties, after such notice, proceed to execute it. It appears to us that this is an entirely erroneous view of the scope and reasoning of the charge, even in the passages above cited. But taking them in connection with other passages in the same charge, it is beyond doubt that no such distinction was in the mind of the court, nor was in fact uttered to the jury. The language of the charge has reference to the actual posture of the case before the court, and not to any other possible state of facts. The case was not of a settlement already made and executed by the settler alone, with a fraudulent intent, to which settlement the wife or her trustee were not contemplated to be executing parties, and which was, after notice of the intent, accepted by them, in which case the effect of notice might have been the very hinge of the cause. But the case was of marriage articles about to be executed by all the parties upon negotiations then had between them for that purpose, and of course if there was a fraudulent design known to all the parties at the time, the very execution of the articles made them all equally participators and parties to the fraud. It necessarily involved combination, and participation, and preconcert. It was to this posture of facts, that the reasoning of the charge was addressed, and it met and stated the law truly, as applicable to them. Notice, under such circumstances, necessarily included participation in the fraud. It was not possible, that the wife and her trustee, with notice of an intended fraud on

Page 32 U. S. 395

the part of her husband, could execute the instrument, without being, in the sense of the law, *participes delicti*.

But the charge does, in various other passages, distinctly point out to the jury, the very doctrine, which the plaintiffs in error assume as the basis of their argument, and for which they contend. Thus, in commenting upon the different classes of conveyances, to which the statute of 13 Eliz. is applicable, it is observed that all

conveyances are valid and excepted, which are

"for a valuable consideration, in good faith, without notice by the person receiving the conveyance, of any fraud, covin, or collusion by the grantor to defraud his creditors."

Again,

"the consideration being valuable, if the contract, whether executed or executory, is made in good faith, with one having no notice or knowledge of any fraud, covin, or collusion to defraud creditors, performance may be enforced, or voluntarily made, and the contract carried into execution at any time, either in the whole or in part, as is in the power of the party."

Again,

"It is the opinion of the court, that the evidence in this case brings the marriage contract within the sixth section of the law (the act of 13 Eliz), excepting it from the operation of the first section, unless you shall find, that it was made, not *bona fide*, or with notice or knowledge of a fraud in John R. Thomson in entering into it, brought home to his intended wife, and that Thomson actually entered into it, with such fraudulent, covinous, and collusive intention."

And, without dwelling on other passages equally expressive, it is added in the very close of the charge,

"We conclude, then, with instructing you that a settlement made before marriage makes the intended wife a purchaser for a valuable consideration; if agreed to be made, she is a creditor, and protected in the enjoyment of the thing settled, and entitled to the means of enforcing what is executory, if the transaction was *bona fide* and without notice or fraud."

That these directions are correct in point of law cannot admit of doubt, and that they cover the whole ground asserted in the argument for the plaintiffs, seems equally undeniable. We may then dismiss any further commentary on this part of the case.

The next objection is to the charge of the court in regard to the furniture. The court was requested to charge the jury

Page 32 U. S. 396

that the expenditure of \$5,000 in furnishing the house was *per se* fraudulent. The court refused so to do, stating

"That furniture is part of the marriage contract, to be provided by Thomson, in a suitable manner, as he should think fit. He had a discretion, which he might exercise in a reasonable manner, according to their station and associations in life, proportioned to the kind of house and extent of income; the trustee or wife could not, in law or equity, compel Thomson to furnish it extravagantly, or at useless and wanton expense, and if he should do it voluntarily, it would not be within the true spirit and meaning of the marriage articles, and might be deemed a legal fraud on creditors, as to the excess. But before we can say, that it is a fraud in law, to expend \$5,000 in furnishing a house costing \$13,000, and the establishment to be supported by the income of an investment of \$40,000 in productive funds, we must be satisfied, that it is, at the first blush, an extravagant and unwarranted expenditure, under all the circumstances in evidence, and to an extent indicating some fraudulent or other motive unconnected with the fair execution of the contract, of which we are not satisfied."

It is difficult to perceive any error in this direction, and it was going quite as far in favor of the plaintiffs in error as the law would warrant, for the change of circumstances of the defendant made no difference in his obligations to perform the stipulations of the marriage articles. The court might well have refused to give the instruction, without any explanation, for it was asking them to decide, as matter of law, what was clearly matter of fact. The argument at the bar has indeed insisted that the court misunderstood the object and request of the counsel; but there is no evidence of that on the record, and certainly it is not to be presumed.

The next objection is to the charge of the court respecting the delivery of the notes to Captain Robert Stockton in September, 1829. The court was requested to

charge the jury that the delivery of these notes to Captain Stockton was a fraud. The court directed the jury that

"If it was done in order to comply in part with the agreement, it was not so. If it was colorable, made with the intention of covering and

Page 32 U. S. 397

concealing so much, under pretense of the marriage articles, for Thomson's use, and so received by the trustee, it was legally fraudulent as to creditors; but if delivered with such intention and not so accepted, then Captain Stockton might not only fairly apply it to the trust fund, but was bound so to do. Though it may have been done on the eve of the judgment confessed in New Jersey, that would make no difference, it being to carry into effect the agreement of December, 1825."

We cannot perceive any error in this part of the charge. The wife became a purchaser and creditor of her husband in virtue of the marriage articles, and if the delivery of the notes was made in part performance of these articles, *bona fide* and without fraud, it was a discharge of a moral as well as of a legal duty. Among creditors equally meritorious, a debtor may conscientiously prefer one to another, and it can make no difference that the preferred creditor is his wife.

The remaining objection is that the marriage articles are inoperative and void, not having been recorded within the time prescribed by the laws of New Jersey for the registration of conveyances. To this objection several answers may be given, each of which is equally conclusive against the plaintiffs in error. In the first place, marriage articles or settlements, as such, are not required by the laws of New Jersey to be recorded at all, but only conveyances of real estate, and as to conveyances of real estate the omission to record them avoids them only as to purchasers and creditors, leaving them in full force between the parties. This is the express provision of the statute of New Jersey of 1820, so that notwithstanding the nonregistration, the articles were good between the parties. In the next place, as to the personal estate, covenanted on the part of the defendant to be settled on his

wife, whether furniture or money, it is clear that the nonregistration of the articles could produce no effect whatever. If the conveyance was free of fraud, it was, as to the personal estate, completely valid even against creditors. In the next place, as to the real estate covered by the articles, whether these articles are treated as an actual conveyance or as an executory contract, it is clear that

Page 32 U. S. 398

except as to the creditors of the grantor, Mr. Stockton, they were completely valid and operative. Viewed as a conveyance or as a contract for a conveyance, the husband could not, consistently with the avowed trusts, take any legal estate or executed use in the real estate. The grantor necessarily remained the legal owner in order to effectuate the trusts of the settlement, and the husband could entitle himself to the benefit of the trusts provided in his favor only in the events and upon the contingencies which are therein stated. He had no equitable interest therein capable of a present appropriation by his creditors. In every view of the circumstances, it is therefore clear that the nonregistration of the articles does not touch the plaintiffs' rights, and the court was correct in its instruction to the jury "that the marriage contract is not void for want of being recorded in time."

Upon the whole it is the unanimous opinion of the Court that the judgment of the circuit court ought to be

Affirmed with costs.