

If, then, this was a contest between Mr. Brawner and the heirs at law of, or persons claiming as volunteers under her husband, and it could be made out, by clear and satisfactory proofs, that the money with which "Elleslie" was paid for was advanced by Mrs. Brawner, there might, perhaps, be no difficulty in declaring, that a trust resulted to her by operation of law. This, however, is not a case between her and volunteers under her husband. The rights of subsequent creditors are involved here, and the question is, whether, assuming the proof to be admissible and adequate, a trust of which they could have had no knowledge, and which results only by construction of law, and to subserve the purposes of justice, as between the party in whose name the conveyance is taken and him by whom the purchase money is paid, shall be set up to their prejudice.

No case has been, or, it is believed can be, produced, to establish the affirmative of this proposition; and it seems to me not only replete with danger and mischief, but to be in conflict with settled principles.

Under the act of 1785, ch. 72, sec. 11, a deed, to the validity of which recording is necessary by law, may be recorded by a decree of this court, with a limitation, however, that it shall not in any way affect the creditors of the party making such deed, who may trust such party after the date of the deed; and, therefore, as to those creditors who trusted Mr. Brawner after the date of the alleged payment with the money of the wife, even if a deed had been executed by him declaring the trust, and that deed had been withheld from the records it could now only be recorded or enforced, with the savings of the rights of these creditors, as expressed in the proviso of the statute. *Pannell & Smith vs. Farmers' Bank*, 7 H. & J., 202.

There can be no doubt, as was said by the Court of Appeals in *Alexander et al. vs. Ghiselin et al.*, 5 Gill, 181, that this court may direct a conveyance, where a party holding a bond of conveyance is in possession, and has paid the purchase money; and that such conveyance will prevail against creditors whose judgments intervened between the equitable title by the bond and the legal title by the decree and deed.