

though it must have been known to both parties. The delay of the wife is not explained, but such a delay does not bar her right if a trust existed in regard to this money. Such a trust, I hold, did exist as to all the moneys received from Scotland which appear in the deposit receipts—but not necessarily so as to the income or interest derivable from the principal sums. On the 15th May, 1896, the wife consented to \$650 being drawn out of the capital for investment by the husband. And again on the 6th October, 1896, a further sum of \$500 for a like purpose. Finally on the 12th January, 1897, she endorsed to her husband the whole of the two amounts then on deposit in her name: one receipt for \$1,721 and one for \$589. The husband claims these two sums as a gift out and out from the wife. I cannot, having regard to all the surroundings, accept this conclusion. The parties were not on equal terms: she had already discovered his unfaithfulness to her, and was greatly disturbed and nervously unstrung. The matter was kept quiet, but her condition was such that the physician advised a rest and a journey to the old country: but to that her husband would assent only on condition that she turned over all this money to him, as he said he might have occasion to use it or some of it during her absence. In her weak and disordered condition on the eve of her departure, it needed much less than coercion to induce her to endorse the receipts and give them to her husband. He cannot be allowed to take advantage of such a surrender. His position as husband was to protect her even from herself; and, taking the receipts as he did and as she gave them, he did not cease to be her trustee for those sums, i.e., \$1,721 and \$589. He is also to be charged with the two other principal sums withdrawn for a special purpose which he does not seem to have fulfilled, but rather to have pocketed or otherwise expended the money (i.e., \$650 and \$500.)

The interest or income from the capital sums stands on a different footing, which should exempt him from liability as a matter of fairness between man and wife living together in family and household relations. The presumption is in such cases that the income of the wife's separate property is expended for the joint benefit of husband and wife and their household. That is supported by many circumstances which need not be detailed; except to say that she returned to her home from the journey in December, 1897; and, though he claimed the money as his own, they lived together supported by the husband till she left the house in 1910. Even in the absence of these details, I would not (having regard to the whole course of litiga-