

Peter Campbell and his wife, Henderson and his first wife, are all dead.

This bill is filed seeking to have the heirs at law of the late Ann Henderson (parties hereto) declared trustees for the three infant children of the late Thomas Henderson as to this latter 33 acres, and to have the whole 66 acres sold, and partition and distribution of the proceeds made among such infants.

The law is well settled that "although a purchase in the name of the wife, if altogether unexplained, will be deemed a gift, yet you may take surrounding circumstances into consideration so as to say it is a trust, not a gift," as it is thus expressed by Jessel, M.R., in *Marshall v. Crutwell*, L.R. 22, Eq., p. 329; and as Mr. Justice Strong, as V.C., in *Owen v. Kennedy*, 20 Grant, p. 178, states it: "The land having been bought with the money of the husband and the conveyance having been made to his wife, there would, in the absence of proof to the contrary, be a presumption arising from the relationship of husband and wife sufficient to counteract the trust which ordinarily results when property is purchased and paid for with the money of a person other than that one to whom the conveyance is made. It is, however, open to the plaintiff to rebut the presumption of advancement by parol proof, that such was not the intention of the purchaser at the time the conveyance was made.

Later cases admit the correctness of these two definitions of the law in this respect.

In this case, consequently, the whole question turns upon the sufficiency of the parol evidence given in rebuttal.

Taking "into view all the circumstances, as I am bound to do as a jurymen"—as Jessel, M.R., suggests—I think the circumstances under which this deed of the 33 acres was executed in the wife's name, shew that it was so taken as a mere matter of convenience and that it was not intended as a provision for the wife.

The principal witness was John Henderson, at present a resident of the United States. He was an adopted child of Thomas and Ann Henderson, lived with them at Brackley Point, and moved with them to Newport. He was 14 years old when the purchase of this 33 acres was made. He saw the money paid by Thomas Henderson, as his own, and was present at the negotiations for the purchase.

According to his account, which I have every reason to believe, the vendor, Peter Campbell, objected to give the