

REPORTS OF CASES

ADJUDGED IN THE

High Court of Chancery,

BEFORE

SIR WILLIAM PAGE WOOD, KNT., VICE-CHANCELLOR:

COMMENCING (WITH THE EXCEPTION OF A FEW EARLIER CASES) IN

MICHAELMAS TERM, 19 VICT. 1855.

1855.

WRIGHT *v.* VANDERPLANK.

July 20th &
23rd.

ELIZABETH WRIGHT, before her marriage *Elizabeth Vanderplank*, spinster, was the only child of the defendant, *Samuel Vanderplank*, and was born in February, 1822. She was entitled, under devises made in her favour by her

Constructive Fraud—Undue Influence—Parent and Child—Acquiescence—Laches—Account.

In every case of a gift to a parent by a child, shortly after the child attains majority, the Court looks with jealousy upon the transaction, more especially when the parent has, during the minority, been guardian of the child's property, and in receipt of the rents of a considerable estate; and throws upon the parent the onus of shewing plainly and unequivocally that the gift was made, not in consequence of representations on his part, but by the spontaneous act of the child, and that the child had full knowledge of the nature of the deed by which the gift was effected, and of his own position and rights in reference to the property.

A deed was executed by a lady, five months after she came of age, disentailing part of her estates, and giving, for a nominal consideration, an estate for life in the disentailed part to her father, who, during her minority, had been her guardian, and in receipt of the rents of her estates:—*Held* (obiter), that if a bill had been filed shortly after the transaction, either before or possibly after the lady's marriage, which was solemnised sixteen months after the execution of the deed, the transaction could not have been supported, —the deed itself not explaining the nature of the transaction, and it not being shewn that the daughter had proper professional advice,—that the nature of the transaction was explained to or understood by her,—or that the gift was spontaneous or made at a time or under circumstances when she was free from parental influence.

But a bill, which, after the daughter's decease, and nearly ten years after the execution of the deed, was filed by her husband on whom her rights had devolved, praying to have the father declared a trustee of the life interest, and an account of the rents which accrued during his daughter's minority or afterwards, was dismissed on the ground of laches,—it appearing (inter alia) that the Plaintiff was aware of all the circumstances previously to his marriage, and the Court being of opinion, upon the evidence, that, eight years before the bill was filed, both the Plaintiff and his deceased wife had acquiesced in the transaction.

VOL. II.

B

K. J.

1835.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Statement.

mother's family, to an estate in *Northamptonshire*, worth 180*l.* a year, as tenant in tail in remainder expectant on the death of her grandmother, who died in 1831; to an estate in *Leicestershire*, worth 120*l.* a year, as tenant in tail; and to a mansion and 200 acres of land in *Warwickshire*, for an estate in fee. The two last-mentioned estates fell into possession in the years 1824 and 1848 respectively.

As the *Northamptonshire* and *Leicestershire* estates fell into *Elizabeth's* possession, the defendant, as her father and guardian in socage, entered into possession; and he continued in possession or receipt of the rents during his daughter's minority. No account was rendered by the Defendant of the rents so received.

In the year 1836, the Defendant caused a suit, intitled *Vanderplank v. King*, to be instituted on behalf of his daughter, by which, in 1843, her right to a portion of the *Northamptonshire* estates was established. The costs, amounting to between 600*l.* and 700*l.*, were ordered to be paid out of moneys in his hands arising from the income of her estates.

In February, 1843, *Elizabeth* came of age; and, on the 6th of July following, being then residing with her father, she executed the indenture which formed the subject of the present suit.

By that indenture, which was expressed to be made between *Elizabeth*, of the one part, and the Defendant of the other part, and was afterwards enrolled in Chancery as a disentailing deed, after reciting her title to the *Northamptonshire* estates, and that she had then attained her age of twenty-one years, and was desirous, and had determined, to make a disposition of the entirety of the *Northamptonshire* estates, for the purpose of barring her estate tail therein,

and of limiting the same to the uses therein expressed and declared; it was witnessed, that, for the purpose aforesaid, and for the nominal consideration therein mentioned, *Elizabeth* granted and released to the Defendant and his heirs all the said *Northamptonshire* estates, to hold the same, with the appurtenances, unto the Defendant and his heirs absolutely freed and discharged from all estates tail of *Elizabeth* therein, and from all estates to take effect after the determination or in defeasance of such estates tail, to the use of the Defendant and his assigns, during the term of his life, without impeachment of waste, with remainder to the use of *Elizabeth*, her heirs and assigns, for ever.

1855.
WEIGHT
v.
VANDER-
PLANK.
Statement.

In November, 1844, *Elizabeth* married the Plaintiff. In March, 1845, she executed a settlement, limiting the *Northamptonshire* estates to uses, under which, upon her decease, the Plaintiff became entitled to such estates in fee. The limitations in this settlement were expressed to be *subject to the estate for life of the Defendant in the hereditaments therein comprised*. In February, 1850, *Elizabeth* died.

On the 15th of April, 1853, the Plaintiff filed his bill against the Defendant, praying (inter alia), that it might be declared that the life estate limited to the Defendant by the deed of July, 1843, was obtained by him from his deceased daughter by fraud and undue influence, and that the Defendant might be declared a trustee of such life estate for his deceased daughter, from the time of the execution of his deed, and might be decreed to convey such life estate to the Plaintiff. The bill also prayed for an account of the rents and profits of all the estates of *Elizabeth* received by the Defendant, which accrued either during her minority or afterwards, and including an account of the rents and profits of the estates comprised in the deed of July, 1843, which accrued as well before as since the execution of that deed.

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Statement.

The material portions of the evidence relative to the circumstances under which the deed of July, 1843, was executed, and to the subsequent conduct of the Plaintiff and his deceased wife as bearing on the question of acquiescence on their part, are stated in his Honor's judgment.

Argument.

Mr. *Rolt*, Q. C., and Mr. *Cole* for the Plaintiff—The limitation in favour of the Defendant of an estate for life in the hereditaments comprized in the deed of July, 1843, is one from which this Court will not suffer him to derive any personal benefit. No consideration moved from the Defendant; and to sustain the transaction as a voluntary gift would, under the circumstances of the case, be contrary to public policy.

The transaction is not one of the same simple description as that with which the Court had to deal in *Huguenin v. Baseley (a)*. It is the result of a contrivance planned by the Defendant and his solicitor, to keep the daughter in ignorance of her rights. The deed was prepared by the father's solicitor. The form of the deed is ambiguous, and calculated to mislead. It purports to be a disentailing deed, and nothing more. The Defendant's name is ostensibly inserted as releasee to uses. No consideration moved from the Defendant, and the limitation of a life estate to him is wholly unexplained by the deed. There is nothing to shew that, at the time of its execution, the nature of the deed, or the relative position and rights of herself and her father, were properly explained to or understood by the daughter. She had no separate professional adviser; no disinterested person intervened between her and her father. Her only adviser was her father's solicitor, a person under

(a) 14 Ves. 273.

considerable obligation to her father, who was his best client.

1855.
WRIGHT
v.
VANDER-
PLANK.

Argument.

The deed was executed by the daughter little more than four months after she came of age, at a time when she was residing with her father, and under his influence and control; and, even if she understood its effect, still it being in evidence, that for some time before its execution her father had repeatedly represented to her, that he had been a loser by her maintenance, and had expended large sums in recovering portions of her property, the Court will be of opinion, that the gift to the father was not spontaneous, was obtained by undue influence, and cannot be sustained: *Hoghton v. Hoghton (a)*, *Hatch v. Hatch (b)*.

It will be argued, that the gift has been recognised and confirmed by the subsequent deed of 1845, but it is not shewn that, when they executed the latter, either the Plaintiff or his wife had discovered their rights, and were aware that the gift was one which they could successfully dispute. Besides, the mere circumstance that the limitation in the deed of 1844 purports to be made subject to the so called life estate of the Defendant, does not amount to a confirmation or recognition of that estate: *Honner v. Morton (c)*.

Under these circumstances, the Court will declare the Defendant to be a trustee of the life estate for his daughter from the time of the execution of the deed of 1843, and will decree a reconveyance of the property to the Plaintiff, and an account of the rents and profits.

Mr. Willcock, Q. C., and Mr. Hawkins for the Defendant.
—There was nothing unreasonable in this transaction, no—

(a) 15 Beav. 278.

(b) 9 Ves, 252.

(c) 3 Ross. 85.

1855,
 WADSWORTH
 v.
 VANDER-
 PLANK.
 ———
 Argument.

thing in the transaction itself which would induce the Court to set it aside; on the contrary, it was a transaction which, having regard to all the circumstances, was most natural on the part of the daughter. The Plaintiff had incurred, in the suit of *Vanderplank v. King*,—a suit instituted simply for the benefit of the daughter, expenses amounting to between 600*l.* and 700*l.*, not a farthing of which had, at the date of the deed of July, 1843, been charged to the daughter. The daughter was aware, and had of her own accord remarked, that she had in this and other ways put her father to great expense. A deed like the present, executed under such circumstances as these, the Court will regard as a family arrangement, and will not look into all the motives and feelings which may have actuated the parties in entering into such an arrangement. There may be considerations in such cases which the Court could not possibly reach: *Tweddell v. Tweddell* (a).

The absence of a separate professional adviser does not furnish an insuperable objection. The Court does not consider such advice indispensable. It is only of importance as affording proof that the gift was a voluntary and deliberate act. This was the view taken by Lord *Brougham*, C., in *Hunter v. Atkins* (b), where, referring to a decision of Sir *J. Leach*, V. C., in *Griffiths v. Robins* (c), to the effect that the persons claiming the benefit of the gift in that case were bound to shew that it was the result of the donor's free will, and effected by the intervention of some indifferent person, he observes, "But it is quite clear, that he uses this as one obvious test or criterion of that for which we seek in all these cases, namely, the proof of a voluntary and deliberate act, and not as the only way in which the deed could be shewn to be of that description. No man for instance can doubt that, if letters had been produced, written

(a) T. & R. 1, 13. (b) 3 My. & K. 113. (c) 3 Madd. 191.

by the old woman for a course of time, and without any interference at all, or conversations had been proved in which her deliberate intention had been expressed, under no agency of influence or deception, the gift would have been good" (a). Here letters are produced written long after the transaction, as late as October and November, 1844, at a time when the daughter was residing at a distance from her father, and indisputably free from his control, and exercising a sound and independent judgment in the disposition of her affairs; and conversations are proved to have taken place before the date of the deed; and, in both, her intention to benefit her father is deliberately shewn. Such a transaction differs in every material circumstance from that which was set aside in *Hoghton v. Hoghton* (b), where the provision for the future was unreasonably large; the deed was not explained to the son; the son had no professional adviser, and was never consulted in reference to the transaction.

1855.
 WRIGHT
 v.
 VANDER
 PLANK.
 Argument.

And even if the transaction were one which would have been set aside, if impugned within a reasonable time, the Plaintiff was fully aware of all the grievances of which he now complains, at least as early as January, 1845; and having abstained from filing a bill, or taking any measure to obtain redress until April, 1853, he is now precluded from relief by his own laches. Moreover, it is clear from the evidence, and especially from the deed of 1845, that both the Plaintiff and his deceased wife acquiesced in the transaction as one which had better not be disturbed; and *Davenport v. Bishopp* (c) shews that, as against the parties to that deed, the confirmation of the father's life interest was valid, although the father was not a party, and no consideration moved from him.

(a) 3 Madd. 137.

(b) 16 Beav. 276.

(c) 2 Y. & C. C. C. 451, affirm-

ed by Lord Colchester, on appeal, 1 Ph. 396.

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Argument.

With regard to the rents received during the daughter's minority, there is no precedent for the account sought by the bill, the father, whose income was very small, being shewn to have educated and maintained her in a manner which, with other expenses incurred by him on her behalf, must have consumed the whole, or nearly the whole, of her income.

The VICE-CHANCELLOR.—If this bill had been filed before the daughter's marriage, it is clear the transaction of which it complains could not possibly have stood; and for this reason,—the Defendant has not shewn that a full explanation of all the circumstances was made by the father to the daughter before she executed the deed. The onus of shewing this lay with the Defendant, and he has failed to shew it. But upon the point of laches and acquiescence I must hear a reply.

Mr. Rolt, Q. C., in reply.

Two things are required to constitute acquiescence. The parties must know their rights, and they must do acts inconsistent with the supposition that they intended ever to insist on such rights. Neither of these requisites is found here. With regard to the deed of 1845, it is no confirmation of the father's life interest. To constitute a valid confirmation, the parties must be aware that what they are doing has the effect of a confirmation, and must intend it to have that effect: *Murray v. Palmer* (a).

In *Hoghton v. Hoghton* (b), there were some years of delay,—attempted, it is true, to be accounted for by proposals for a compromise; and in this case, up to the year 1848, when the *Warwickshire* estates came into possession.

(a) 2 Sch. & Lef. 474.

(b) 15 Beav. 378.

sion, the Plaintiff had no funds to defray the expense of litigation.

1855.

WRIGHT

v.

VANDER-

PLANK.

Argument.

In regard to the rents received by the Defendant as guardian of his daughter, quoad such rents the Defendant was a mere trustee; the Plaintiff, therefore, is entitled to an account, without reference to the Statute of Limitations: *Matthew v. Brise* (a).

Judgment reserved.

VICE-CHANCELLOR SIR W. PAGE WOOD:—

July 23rd

Judgment.

This is one of those very painful cases which happily do not often occur. An attempt is made to set aside a conveyance made by a daughter very soon after attaining her majority, giving to her father a life interest in part of her real estate, to which she became entitled on the death of her mother.

I did not hear the reply as to the deed itself, being satisfied that, if the daughter had filed her bill shortly after the transaction, either before or possibly after her marriage, the deed could not have been supported. This Court looks with very proper jealousy on every transaction of this kind between a parent and child, more especially when the parent has, during the minority, been guardian of the child's property, and in receipt of the rents of a considerable estate; and if the child after attaining majority executes a deed by which the parent is to obtain a personal benefit, the Court throws upon him the necessity of shewing, plainly and unequivocally, that such benefit was given him, not in consequence of representations on his part, but by the spontaneous act of the child; and that the child had full knowledge of the

(a) 14 Beav. 341.

1856.
 WAREY
 v.
 VANDER-
 PLANK.
 Judgment.

nature of the deed he was executing, and of his own position and rights in reference to the property. If those things are clearly made out, this Court has no reason to interfere.

The evidence in this case is very defective in regard to the spontaneous nature of this gift. No doubt it was not a very unlikely gift for a daughter to make, nor perhaps a very improvident one, considering that its effect was to give a life interest to the father in his late wife's property—an interest which, in many cases, the father takes by his marriage settlement; at the same time it deprived the daughter, down to the year 1848, when she came into possession of other considerable property, of one-half the income which would otherwise have come to her. The father, during the minority of his daughter, was in the receipt of considerable sums, forming the income of her property, and has given no account whatever of those receipts.

A more painful part of the case is, that there is a shade still left on the exact nature of the transaction in this respect, that there is no satisfactory evidence of the daughter's having understood the nature of the deed which she executed. Mr. *Edwards*, who was the solicitor of the father, and the father himself, give the only evidence on that subject. Mr. *Edwards* says he had an interview with the lady in May, 1843, she having attained the age of twenty-one years in the February preceding. He says, she stated that she was willing to make the gift. Even that depended on representations previously made by the father, which were coloured by his saying, that he was a loser by her maintenance, and had incurred in respect of her estate considerable expenses in the suit of *Vanderplank v. King*. Independently, however, of its being doubtful, as I said before, whether this was spontaneously the daughter's own gift, it is further doubtful whether she understood the nature of the deed. The deed itself does not explain the transaction. It simply

bars the entail, and then limits the property to the father for life; and Mr. *Edwards*, the solicitor who prepared it, has not taken care, as he ought to have done, to preserve evidence to mark the nature of the transaction. He does not now produce the original draft of the deed as approved by a barrister. Something which is called the original draft is produced, which appears to be a mere copy, without any alterations or marginal observations. The solicitor says he has no entry of the transaction. He made out no bill of costs; and no other evidence is produced of interviews with the daughter. Therefore, the transaction is of far too doubtful a character for it to be possible for the Court to sustain it on its own merits.

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Judgment.

On the other hand there are some favourable circumstances on the side of the father. It seems that he was put to considerable expense. [Mr. *Cole*.—The costs in *Vanderplank v. King* were directed to be paid out of money of the daughter in the hands of the father.] Still that would reduce the income which he was receiving for her maintenance. There is also the favourable circumstance, that, though the transaction was commenced in May, the deed was not executed until July following. There seems therefore to have been no pressure or hurry about it, nevertheless it is enough to say that the transaction is far from being explained satisfactorily, and it is clearly one which, had it been sought to be set aside within the period I have indicated, could not have been supported.

But the deed is sought to be set aside by the husband of the daughter claiming under a settlement which she executed in his favour in 1845, the bill being filed by him in 1853, and under the circumstances which I shall proceed to state.

[His Honour then entered into a minute investigation

1856.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Judgment.

of the evidence relative to the conduct of the Plaintiff and his deceased wife from the time of the execution of the deed in question until their marriage, from which he inferred that the following facts were satisfactorily established:—that previously to her marriage, which took place in November, 1844, the daughter had become aware, and had informed the Plaintiff, that by the effect of that deed her father was entitled to a life interest in the disentailed estates; that before her marriage she had expressed her dissatisfaction with the deed to a relative of her family, and consulted, although not professionally, a solicitor, who was a member of the family and who was not her father's solicitor, she being then free from the control of her father; that in consequence the solicitor communicated with other members of her family, who gave it as their opinion that the transaction should not be disturbed; but before her marriage the daughter and her husband were made aware that the transaction was one which might be disturbed if the parties were disposed to disturb it; that for some time previously to her marriage the daughter was free from the control of her father, and left by him at liberty to exercise her own discretion in the disposition of her affairs; that it appeared in the course of a protracted negotiation relative to a settlement of her estates, which it was proposed to execute before her marriage, but which was not eventually executed, and by letters written by her to her father in the course of such negotiation, that she exercised an independent judgment in reference to the distribution of her property, and was competent and prepared to protect her own interest and discharge her duty towards the Plaintiff; nevertheless, although she was aware that by the disentailing deed a life interest was limited to her father in the disentailed property, no mention was made to the father of any objection to that life interest either by the lady herself or by the Plaintiff previously to their marriage; on the contrary, a draft settlement which the father proposed to have

executed, and in which the father's life estate was confirmed by an express limitation, such limitation having been interlined so as to call particular attention to it, had been read, and except in immaterial respects approved by the Plaintiff; and although for other reasons it was not eventually executed, no intimation was made to the father that any objection was entertained by the parties to that portion of the draft, but the only question was whether he should have an annuity instead. His Honour then resumed.]

1856.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Judgment.

Then the marriage took place, and the father was present at it. He would not have been there probably if there had been any intimation of an intention to raise any further question about his having a life estate. But the matter does not rest there. If the bill had been filed within a reasonable time, it is possible that the suit would still have succeeded. But in the year 1845, after the marriage, the case against the Plaintiff is strengthened. The father it seems had raised questions not very reasonable or handsome about the daughter's marriage outfit being too expensive. That was not a very delicate proceeding, considering his position, and remembering that he had been receiving her income so long, and the arrangement concerning the gift to him of a life estate in her property. It seems that the persons who furnished the daughter's outfit wrote to say that they should look to the husband for payment. On which, in January, 1845, the husband wrote to the Defendant, not at all unreasonably, I think, offended, but shewing no intention whatever of giving up anything, on which he thought he had a right to insist. He says, "I was not a little astonished at being shewn a letter *Elizabeth* received from *Denny* after what had passed between us in *London* the other day. I did not expect to have heard anything more of this affair, which, by the bye, I never ought to have been troubled with, and, as I told you in *London*, no other father-in-law would have allowed

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Judgment.

under any circumstances, much less in this instance." He then recapitulates everything. "An only daughter being married, her husband is called upon for her debts by a father who has been living upon her income for these nineteen or twenty years, and has into the bargain got her, the moment she was of age, to sign a deed (whether it is legal or not, I do not profess to say) conveying a great portion of her property to him for life; and after all this he hesitates to pay a few bills for her to the amount of perhaps 200*l*. You told me that in a few days, I think you said last Saturday week, you would send *Denay* a part of his account, instead of which you write to him calling in question his honesty as a tradesman, &c., and he sends it here hinting that he shall enforce the payment of it. Having no claim upon you, perhaps he is right; but if he has no claim upon you I am bold to believe that I have, or my legal adviser is vastly mistaken. I should never have troubled myself about *Elizabeth's* affairs previous to her marriage, but if I am to pay her debts, it is nothing but fair I should know how the property has been expended."

I agree that what he says his legal adviser told him, probably refers to the income received by the father during the daughter's minority; but I cannot forget what had taken place previously to the marriage, and the doubts which then existed as to the father's life interest. Besides, in this letter, the Plaintiff expressly mentions that life interest, adding, "whether it is legal or not, I do not profess to say;" therefore, it is plain, he considers that transaction as part of the matters of which he had a right to complain. He had a legal adviser at hand, but had not consulted him on the subject until after his wife's family had given it as their opinion that the transaction had better not be disturbed. It is plain that the husband at this time thought so. His father-in-law had given countenance to the marriage without any idea that his life interest was to be dis-

puted. Afterwards the husband wrote this letter saying only, "What, will you dispute this charge for your daughter's outfit under all these circumstances?" and the father then paid for the daughter's marriage outfit. He was under no legal obligation to pay this debt. It is said he might be liable to account for the money he received during his daughter's minority, but it is doubtful whether there might be anything due from him on that account. The husband in his letter mentioned all these circumstances, including the life interest given to the father; and it is too much to say, when he has obtained the money, and shamed the father into paying it by all these statements, that he can maintain a suit to set aside the transaction.

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.

After all this, a deed of settlement was executed by the husband and wife of the property to which she was entitled, subject to the father's life estate. That was no confirmation of the gift to the father, but it was very strong evidence of acquiescence in it; for if the parties had intended to question it, the simple way would have been to settle the property subject to the life estate of the father, "if any." The solicitor who prepared this deed says he did not know that the gift to the father could be set aside; but after all the discussion which took place before the marriage and the letter written by the husband, when he had a solicitor at hand to advise him, I cannot permit him to assume, in his own favour, that it was solely through the influence of his solicitor that the defendant's life interest was reserved in this deed. The plain inference is, that the parties considered the transaction disposed of. The wife never intended to pass by this settlement to her husband a right to sue her father, but both believed that the whole matter was entirely settled. That is confirmed by the evidence of *Howes* the solicitor, who prepared and attested the settlement of 1845. He says that on the occasion of the execution of that settlement, Mrs. *Wright* said that in con-

1855.
 WINDYBURY
 v.
 VANDER-
 PLANK.
 Judgment.

sequence of the life estate being given up to her father, it made her income very small at that time. He adds:—
 “She said that she had given up that life estate to her father.” It is plain that both then considered the matter to be settled. After this, during the whole of the wife’s life, the husband never filed any bill.

In *Hoghton v. Hoghton* (a) the delay was only five years. The Master of the Rolls observes upon it, but says that it is explained by the fact that proposals for a compromise were pending. There is nothing of that kind here. On the contrary, the husband and wife afterwards received some favours from the father, which were of small value no doubt,—a little plate and similar presents,—but they shew that the father could have no reason to suppose that there was any intention to recall the life interest which was given him. It is true, that it would not be for the peace of families to allow fathers to take benefits from their children as this father did from his child; but neither would it be for the peace of families, in a case like this, where a wife had the protection of her husband and friends, after an interval of nearly ten years, to allow the husband to call back from the father a life estate which he had improperly taken by her gift.

I should have noticed, as furnishing further evidence of acquiescence, a letter written by the Plaintiff to the Defendant in September, 1851. It is written in reference to a proposal then in contemplation for a partition and sale of part of the disentailed property. He says, “Let me hear from you directly, with your opinion upon the subject. My opinion is, that it would be decidedly better to sell the whole of the undivided property.” And then he speaks of the Defendant’s life interest in that property, and proposes that, in the event of their concurring in a sale, the proceeds should be invested in the purchase of land in another loca-

(a) 15 Beav. 278, 314.

lity; he speaks distinctly of the Defendant's life interest in the property and treats it as a recognised and subsisting interest.

Under these circumstances it seems to me that it is far too late now to set this transaction aside. It is plain that on the second marriage of the husband some of the wife's relatives have suggested the expediency of filing the bill, but for the reasons I have given I think it cannot be sustained.

The only remaining question is as to the income of the daughter's property. I never recollect an instance in which, parties who have known their rights having allowed a father to receive the income of his daughter's property, a bill has been filed after the daughter attained her majority to have an account taken in respect of the income received by the father during her minority. If it were a case in which there was any doubt, or obscurity in the transaction, as to the amount of the rents so received, or the like,—if there were any complication of the account, or any thing to lead to the supposition that the matter had not been settled during the daughter's life, it would be a different case; but there nothing can be more simple. There is some little dispute whether the father received 300*l.* a year or less. It appears he sent his daughter to school for some years at 60*l.* a year, and had a governess, and kept up an establishment for her, with a carriage and horses and a groom, and she had the benefit of that establishment. He also embarked in a Chancery suit for her of a doubtful kind, which cost about 600*l.*, and that would have to come out of the rents which he received. The most I could see my way to, under such circumstances, would be—that, having received 300*l.* a year during the daughter's minority, he should be charged with that; but as he seems to have had very little other pro-

1855.
WRIGHT
v
VANDEB-
PLANK.
Judgment.

1855.
 WRIGHT
 v.
 VANDER-
 PLANK.
 Judgment.

perty, I do not think such an order is called for. Looking to the income he had, I have no doubt the Court would have allowed him a considerable part of the daughter's income. After a lapse of ten years, it is too much to say that the account should be taken. It would only create disturbance in a manner which this Court never encourages.

The husband, being entitled to raise these questions in 1844, has filed this bill raising them for the first time in 1853, after writing, in 1845, the letter I have read, in which he complained of all the matters in controversy,—after payment by the father of the 200*l.*, of which it was the object of that letter to obtain payment. Since 1848 the husband has been in possession, in right of his wife, of property amply sufficient to enable him to assert his rights; but up to the month of April, 1853, he did not think fit to do so. Upon the whole, therefore, I am of opinion that his conduct constitutes a degree of laches which disentitles him to relief in this Court, and the bill must be dismissed, but without costs.

—♦—

NICHOLSON v. TUTIN.

Creditors' Deed—Assent—Execution after Time stipulated.

WILLIAM WELBANK, of York, now deceased, by indentures, dated respectively the 13th and 14th days of January, 1840, granted, assigned, and demised to *Dighton*,

A creditor assigned property, by deed, to trustees upon trust to sell, and apply the clear proceeds in payment of the debts owing by him to such of his creditors as should, before a certain day, execute the deed, and the surplus, if any, to the assignor; and the deed contained a release by the creditors. The assignor and the trustees, who were also creditors, executed the deed at once. No other creditor executed before the stipulated day, but notice of the deed was given to them all, and they forbore to sue, and fifteen years afterwards some were permitted to execute,—the trustees meanwhile having taken possession of and sold part of the property:—*Held*, that the deed was binding on the assignor, and that the creditors were entitled to have the trusts of it carried into effect.