

favor of the party paying, provided the payment of the money be clearly proved; and if only part of the purchase-money is paid by a third party, there will be a resulting trust in his favor *pro tanto*; and the same doctrine applies to a joint purchase. But then it seems to be indispensable to the creation of such a trust, that the money should be paid *at the time*. 4 *Kent's Com.*, 305, 306.

Now, in this case, it is quite apparent, that no part of the purchase-money of the land in question was paid by Galen Purdy *at the time* of the purchase, nor was it borrowed from the Bank upon his responsibility, the note upon which the money was loaned having been made by Thomas and Henry, and endorsed by O'Hara and Stockett. In truth, there is nothing in the case to show clearly when, or what proportion of the money was paid by Galen, the admission of the answer being, that Galen and Henry had paid their share of the Bank debt, but in what proportions between them, or at what periods they paid, does not appear either in the pleadings or proofs. It might, therefore, be somewhat difficult to make out a resulting trust in favor of Galen, or to define clearly the character of the interest he had in the land. But whatever that interest was, it was certainly not a legal estate, and being now in the Bank, from whom the money was borrowed to pay for the property, and having been there from a period anterior to and during the coverture, my opinion is, the widow of Galen has no claim to dower in it.

These lands were divided in the way mentioned, and by agreement of the parties, in the year 1845, and have been cultivated and enjoyed according to said division from that time until 1850, when Henry and Galen died. My opinion is, that this division was designed to be permanent, and it is quite possible that upon a proper application, it would be enforced in Equity. I cannot concur in the argument of the solicitor for the complainant, that it was only intended as a temporary arrangement for the purpose of cultivation, or for some other purpose of that description. It is not at all probable, I think, that if the division was only intended to be temporary, the parties would have called in third persons to