CASES ON A WIFE'S SEPARATE ESTATE AND EQUITY TO A SETTLEMENT OUT OF HER EQUITABLE PROPERTY

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Cases on a Wife's Separate Estate and Equity to a Settlement Out of Her Equitable Property by George Sweet

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GEORGE SWEET

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LONDON:
C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

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VIZ.

SCARBOROUGH v. SORMAN,
TULLETT v. ARMSTRONG,
DIXON v. DIXON,
NEDBY v. NEDBY,
STEAD v. NELSON,
NEWLANDS v. HOLMES, and
STURGES v. CHAMPNEYS.

WITH

NOTICES OF THE EARLIER DECISIONS.

BY GEORGE SWEET,
OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW.

LONDON:
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1840.

ADVERTISEMENT.

THE leading principles of the doctrines of Separate Estate, and of a Wife's Equity to a Provision out of Property held in Trust for her, having been finally (*a*) settled in some recent decisions by the Lord Chancellor, and both subjects having been involved in some of the earlier cases, it is hoped that the publication of these decisions together, in the present form, will not be unacceptable to the Profession.

13, *Southampton Buildings*,
January, 1840.

(*a*) It is understood that there will be no appeal in any of the cases alluded to.

SEPARATE ESTATE.

THE course which the authorities have taken upon the subject of separate estate, is a very instructive example of the danger of ostensibly founding decisions in courts of equity upon dry technical rules, when the real inducement which sways the judge is a consideration of the general policy and utility of the doctrine which he is establishing. The whole of the difficulty which has been experienced in the present instance is traceable to the timid language used by Lord Eldon, in deciding, in the case of *Brandon* v. *Robinson* (*a*), that a declaration against anticipation in a gift of a fund to a man during his life, did not prevent his assignees in bankruptcy from selling his life-interest. The impolicy of allowing property to be vested in a man which shall not be accessible to his creditors, and upon which his most solemn engagements shall be inoperative, is obviously the true ground upon which a court of equity ought to refuse to give effect to such a restriction, and was no doubt the consideration which led to the judgment pronounced by Lord Eldon; but his Lordship habitually preferred catching at the shadow of a precedent or established principle, to avowing a new principle, however equitable, and within the province of his authority. He said, "Without doubt a testator may limit his property until the object of his bounty shall become bankrupt; but it is equally clear, that if he give it for life, he cannot take away the incidents to that estate; the difference is very great between giving an interest to a person while he shall remain solvent and then over, and giving it for life. If there be a limitation over in the event of insolvency or bankruptcy, then neither the person so becoming bankrupt or insolvent, nor his assignees, can take any benefit beyond the terms of the gift. In the case which arose upon Lord Foley's will (*b*), it was argued, and I thought admitted, that if the estate went to the sons as property in them, all the consequences must attach. In regard to property given to the separate use of

(*a*) 18 Ves. 429; 1 Rose, 197. (*b*) 1 Br. C. C. 274; 6 Ves. 351.