concerned. If McCullough told complt the same story that he is reported by this witness to have told her mother, the complt had no reason to feel that she was at all insecure in her possession of the property.

It may be true, as suggested by defts' counsel, that Everist "did not act with candor," towards his wife, or it may be that he expected before a great while to lay off his obligations to McCullough by drawing another prize, and pending the fruition of that hope observed that sort of reticence characteristic of a large class of men in such a situation, or it may even be that he at some time or other may have made a full disclosure to his wife of all the particulars; whichever one of these speculations may be nearest to the truth, it is clear that neither of them has any material bearing upon the real question as issue.

Exceptions are filed by the defts to the competency as witness of Everist and his wife, the complt. Also, by, by the complt to the competency of John G. McCullough.

I have found no occasion to use the testimony of the Everists, upon any material point controverted, and I have given the defts the benefit of McCullough's testimony. It therefore becomes unnecessary to decide the questions of competency raised. Notice should, however, be taken of a point made by defts' counsel on Everist's testimony, "him and me bought that house." (J.M.C.9.) As I understand the argument, it is that this testimony shows that, according to the agreement between the parties, (the same testified to by Hopper,) the purchase of the house was not to be made by McCullough, but by McCullough and Everist jointly; that there was thus a farther act contemplated by Everist to be done by him, and that the donation to the wife was not completed, nor the trust in McCullough perfected at the time the money changed hands.

Conceding this to be true, and that Everist could have revoked at any time before the house was actually "bought," (in the sense in which the witness uses the word,) yet he did not revoke, but went on and did what was contemplated, and thus made the trust complete and irrevocable long before any part of the trust fund was misapplied for his use.

If the word "bought" is to be extended beyond the meaning which the witness clearly attached to it, in the expression quoted, and to be carried down to the time of paying the money and taking the deed, then the evidence shows two things: first, that the whole of that part of the business was transacted by McCullough alone, a circumstance which emphatically negatives the idea that by the terms of the trust Everist was to have any part in it; second, that if Everist had a power of revocation and withdrawal, and a power to break the trust continuing down to that date, (14 Aug. 1857.) he did not, as a matter of fact, exercise it, in which view of the case the trust becomes complete and irrevocable at that date.

In any view of the case it is not a legitimate supposition, nor at all consistent with the facts proved, that the trust was so designed as to allow it to be broken up and defeated after the house was bought and the wife put in actual possession, and the evidence shows no attempt at revocation by partial withdrawal of the fund until long after that event.

The circumstance that the title was taken by McCullough in his own name relied on as indicating, that in the contemplation of the parties, the trust was still incomplete and inchoate, is at best an equivocal circumstance, and, in view of Everist's indebtedness at the time, easily accounted for upon a different hypothesis. But allow a