that case a contest arose between the creditors of a husband and his wife, who had married in 1842 with a settlement; as to the right of the wife to certain property purchased by her in 1876. It was claimed by the creditors, that the wife having married with a settlement the property in question, having been purchased by her after marriage, became the husband's property, and therefore his creditors were entitled to seize it for the payment of their debts. The property in question was a debt due to the husband which the wife had purchased from her husband's assignee in insolvency; the husband had subsequently sued for, and recovered the debt, which was at the time in court. The fund was unaffected by the marriage settlement. It was argued for the creditors, that the existence of the settlement deprived the wife of the benefit of the Act of 1859, but the learned Chancellor having regard to the provisions of section 19, and what he considered the scope of the Act, came to the conclusion, that the existence of the settlement did not prevent the application of the Act to property subsequently acquired by the wife, and not affected by the settlement.

The 19th section reads as follows: "Nothing in this Act contained shall be construed to prevent any *ante* nuptial settlement or contract being made in the same manner and with the same effect as such contract or settlement might be made if this Act had not been passed; but notwithstanding any such contract or settlement, any separate real, or personal property, of a married woman, acquired either before, or after marriage, and not coming under, or being affected by, such contract or settlement, shall be subject to the provisions of this Act, in the same manner as if no such contract or settlement had been made; and as to such property, and her personal earnings, and any acquisitions therefrom, such woman shall be considered as being married without any marriage contract or settlement."

We are disposed to think that the distinction between marriages which had taken place before the passing of the Act of 1859, and those which have taken place subsequent thereto, has been lost sight of in the case to which we refer. This point does not seem to have been taken at the Bar, nor was it referred to by the learned Chancellor, and yet it occurs to us, that in the application of the Act, there is a vital distinction between the two classes of cases.

It must be remembered that the Act of 1859 was the first step in the way of an attempt to alter the common law rights of husbands and wives. The hardships which the common law entailed were always open to mitigation by the contract of the parties, and marriage settlements were a very common way of securing to the wife separate rights of property. Now it is reasonable to conceive that the Legislature, in its attempt to give married women separate rights of property, would not pretend to interfere in the case of husbands and wives who had actually entered into contractual relations regarding their property: and in cases where an actual settlement existed between the parties, it might not unreasonably be thought to be a part of the agreement between them, that the wife's property, unaffected by the settlement, should pass to the husband as at common law. In such cases the parties had made their contract, and it is not unreasonable to think the Legislature should in such cases in effect say, We will not interfere,—and this in effect they seem to do, for the whole additional rights given by the 2nd section are predicated upon the fact that she, on whom they are conferred, has married "without a settlement." In such cases, the Legislature seeks to provide a