

said Chief Justice Erle in the case of *Capel v. Powell* (17 C.B.N.S. 743, at p. 743), speaking of the law as it stood in 1864, "the wife has no such existence as to enable her to be a suitor in her own right in any Court, neither can she be sued alone. For any wrong committed by her she is liable, and her husband cannot be sued without her, neither can she be sued without joining her husband. Seeing that all her property is vested in the husband, it would be idle to sue the wife alone—the action would be fruitless."

The remarks of Chief Justice Erle in the last-mentioned case certainly support the view put forward by Lord Justice Fletcher Moulton, as he then was, in the case of *Cuenod v. Leslie* (*sup.*). It certainly seems illogical that, when the Legislature has given to the wife the right of acquiring, holding, and disposing of property as if she were a *feme sole*, and it was, as we have seen, only really an accident of the law that the husband had to be joined as a co-defendant in any action in respect of the wife's torts merely because at that time she could not hold property herself, the husband should still be liable to be joined as a co-defendant when the original purpose or necessity for such joinder has now disappeared.

It is, of course, notorious that tort and contract trench the one upon the other. Wherean alleged tort by a wife is in truth a wrong so connected with contract as to give a remedy in breach of contract only, the husband is not liable. As the old law stood, a wife was incapable of binding herself by contract. No action lay either against the husband or the wife for a breach of an alleged contract which the wife had purported to enter into. In the case of fraud committed by the wife in respect of any contract, and which was directly connected with the contract and was the means of effecting it, and parcel of the same transaction, the matter was looked upon as grounded on contract, and neither the husband nor wife could be sued, either alone or together: (see *Liverpool Adelphi Loan Association v. Fairhurst*, 9 Ex. 422). On the other hand, however, where a contract was entered into by a married woman in respect of her equitable separate estate, that equitable separate estate was liable to make good such contract. As to this,