

69; *Weekly Reports*, 10 C. L. 248; *Weller v. Deakins*, 2 C. & P. 618; *Greville v. Chaplin*, 5 Q. B. 745; *Challand v. Bray*, 1 Dowl. N. S. 783; *Marryatt v. Broderick*, 2 M. & W. 369; *Daintree v. Hutchinson*, 10 M. & W. 89; *Charleton v. Hill*, 5 C. & P. 147; *Benbow v. Jones*, 14 M. & W. 193; *Carr v. Martinson*, 1 El. & Ec. 456; *Bally v. Mariott*, 5 C. B. 818; *Diggle v. Higgs*, 2 Ex. D. 422; *Hampden v. Dalsh*, 19 Q. B. D. 189; *Houson v. Hancock*, 8 T. R. 575.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Armour, C.J.] [Nov. 16.

In re Weller.

Married woman—Devise to—Restraint on alienation—R. S. O. c. 132, s. 8.

Certain lands were devised to W., with the proviso that she should not alienate or incumber them until her sister should arrive at the age of forty years, and the proviso that the devise should be for her separate use, independent of her husband's control.

W. applied, under R. S. O. c. 132, s. 8, for an order to bind her interest, for her own benefit, in these lands.

Held, that the restraint against alienation was valid, and would have been so even if the applicant had been a *femme sole*.

Earls v. McAlpine, 27 Gr. 164; 6 A. R. 145; *Pennyman v. McGregor*, 18 C. P. 132; *Smith v. Faught*, 45 U. C. R. 484; *Re Winstanley*, 6 O. R. 315, followed in preference to *Rosher v. Rosher*, 26 Chy. D. 801.

Held, also, that the restraint on alienation was not a restraint on anticipation, within the meaning of the statute.

R. S. Cassels, for the applicant.

Divisional Court.]

[Nov. 19.

GRANT v. CORNOCK.

Husband and wife—Breach of promise of marriage—Statute of Limitations—Successive promises—Independent contracts—Justification of breach—Use of obscene language by the plaintiff—Mitigation of damages—General reputation.

In an action for breach of promise of marriage, the jury found that there was at first a mutual promise to marry in six months, and a subsequent mutual promise to marry on the death of the defendant's father. The jury were also asked (Q. 3), "After the father's death in April, 1879, did the defendant, in response to a question by the plaintiff, say that all was left to his brother to share, and that until his brother shared with him he could not marry her?" To which they answered, "Yes." The division of the father's estate did not take place till December, 1887.

Held, FALCONBRIDGE, J., dissenting, that the answer to the third question was a finding of a mutual promise to marry upon a division of the defendant's father's estate, and, as a breach of that promise did not take place until December, 1887, the cause of action arising thereupon was not barred by the Statute of Limitations at the time the action was brought, in 1888. The several mutual promises were all independent contracts, the promise of the one party being a consideration for the promise by the other, so that each successive mutual promise became a new and independent contract, from the breach of which only the statute would begin to run.

Costello v. Hunter, 12 O. R. 331, distinguished.

Per FALCONBRIDGE, J., that the answer of the jury to the third question did not show a new or substituted agreement, but an excuse for delay or a continuance of the original promise, and the case was therefore governed by *Costello v. Hunter*.

Held, also, FALCONBRIDGE, J., dissenting, that want of bodily chastity is the only misconduct which affords a justification in law for a breach of a promise to marry. It is no justification to show that the woman had been heard to use obscene language; nor is such evidence admissible in mitigation of dam-