

Lorinser, for defendant, showed cause, and filed among other things an affidavit of John Senkler, Jr., describing himself as "partner of the attorney in this cause for the above-named defendant," showing the residence of defendant to be in Philadelphia, and stating that he had not been able to communicate with defendant. The affidavit also stated that deponent had seen in possession of defendant's wife, two deeds relating to the *locus in quo*, and purporting to convey to defendant that part of the *locus* for which the defendant desired to defend.

BURNS, J.—(Granted an order allowing the service as of the day of the date of the order.

BURTON ET AL V. KELLY.

Judgment debt—Married Women's Protection Act, 22 Vic. 2nd Sess. cap. 34. (Con. Stat. U. C. cap. 73)—garnishing rent due to wife for debt of husband.

The mere registry of a judgment against a husband's lands, before the passing of the 22 Vic. cap. 34 (Married Women's Protection Act) does not of itself give a right to the judgment creditor to garnish a debt due for rent of the wife's land since the passing of that act.

(Chambers, 27th December 1860.)

On 3rd December, 1851, the judgment creditors recovered a judgment against the judgment debtor for £153 10s 11d damages and costs, and afterwards caused a certificate of the judgment to be registered against the lands of the judgment debtor.

On 30th November last, upon an affidavit in the usual form made by one of the judgment creditors as to the recovery of the judgment, that the judgment still remained unsatisfied to the amount of £123 7s. 5d., and that Anne Loring of the City of Toronto was indebted to the judgment debtor in the sum of \$215 84 for ground rent due on a day passed in respect of certain premises in the City of Hamilton, an order was made in the usual form attaching all debts due or accruing due from the garnishee to the judgment debtor to answer the judgment of the judgment creditors.

At the same time a summons was issued in the usual form calling upon the garnishee to shew cause why she should not pay the judgment creditors the debt alleged to be due from her to the judgment debtor.

On shewing cause both the garnishee and Loringa Kelly, the wife of the judgment debtor claimed that she the wife of the judgment debtor was entitled in her own right and free from any contract, claim or right of her husband to the moneys sought to be garnished.

It appeared that by a deed in fee simple dated 23rd May, 1860, the Canada Life Assurance Company conveyed to Lorinda Kelly, solely and absolutely, certain lands in the City of Hamilton—that at the time of the conveyance to her there was a subsisting lease of the land to one Valentine H. Tisdale, which was by Tisdale assigned to the garnishee by way of mortgage—that part of the rent sought to be attached accrued due since the conveyance—and that the whole of it was claimed by Lorinda Kelly, as the owner of the reversion in fee.

Jackson for the judgment creditors.

H. B. Morphy for the judgment debtor.

English for the garnishee.

The summons was argued chiefly under the 22 Vic. 2nd Sess. cap. 34, intitled "An act to secure to married women certain separate right of property" (Con. Stat. U. C. cap. 73, page 791.)

RICHARDS, J.—It does not appear that the amount due by the garnishee for rent or any part of it accrued before 4th May, 1859, when the statute in reference to the protection of the property of married women was passed.

The thirteenth section of that act provides that the estate of the husband in the real property of his wife shall not during her life be subject to his debts.

Then follows a proviso which protects the right that any creditor had obtained in respect of the husband's estate in the land of his wife under any judgment or execution obtained before 4th May, 1859.

If the plaintiffs by registering their judgment obtained a charge on the lands of defendant's wife which is now binding they may enforce it. The mere registry of the judgment does not of itself in my opinion, give a right to garnish a debt due for rent of the wife's land after the passing of the act.

The summons and order, so far as relates to the garnishee Anne Loring, must be discharged with costs.

Summons and order discharged with costs.

CHANCERY.

(Reported by THOMAS HOBBS, Esq. Barrister at Law.)

THE TOWN OF PORT HOPE V. THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM.

Consolidated Municipal Loan Fund Acts—Loan to United Counties—Loan to Town within United Counties—Liability of Town.

The United Counties of Northumberland and Durham made application for and obtained, under the Municipal Loan Fund Act, 16 Vic. cap. 22, a loan of the sum of £115,000, for the purpose of constructing certain roads of the united counties, in which roads the town of Port Hope was not directly interested. Afterwards the town of Port Hope itself raised a large sum of money, under the same fund, for the purpose of aiding in the construction of certain railways, and for the improvement of the Port Hope Harbour.

It is, that the town, in addition to its direct liability on the last mentioned loan, continues liable for its proportion of the debentures issued by the united counties.

The Council of the United Counties of Northumberland and Durham, under the authority of the Upper Canada Municipal Loan Fund Act, 16 Vic. cap. 22, raised the sum of £115,000, for the purpose of constructing certain roads in the counties.

The town of Port Hope was not directly interested in these roads, and no part of them was in that town.

The town of Port Hope itself raised the sums of £50,000, £30,000, £50,000 and £85,000 to aid in the construction of certain Railways: the last sum being also for the improvement of the Port Hope harbour.

In pursuance of the act of 1859, "An Act further to amend the Consolidated Municipal Loan Fund Acts," the town caused the rate of five cents in the dollar, in that act mentioned, as the assessed yearly value of all the assessable property in Port Hope, to be levied for the year 1859, and paid over the moneys arising therefrom to the Receiver General, on account of the moneys raised on their own behalf; and they claimed not to be liable for any further assessment in respect of the moneys raised by the united counties.

The united counties, on the other hand, claimed that the town is liable for its proportion of the debentures issued by the united counties: and proceeded to enforce their claim by warrant directed to the sheriff, under the provisions of the Consolidated Assessment Act of Upper Canada.

The plaintiffs thereupon applied to this court for an injunction *McGregor* for plaintiffs: *Hodgins* for defendants.

The judgment of the court was delivered by

SPRAGGE, V. C.—It is not questioned but that the by-law of the united counties for raising the sum of £115,000 was a legal one, and I suppose it cannot be doubted that under the act first referred to, 16 Vic. cap. 22, Port Hope was liable for its proportion of that debt. One clause expressly provides for such a case: "If the by-law has been passed by a county council, the principal and interest of the loan shall be payable by all the townships, towns and villages in the county;" and it then goes on to provide how the county treasurer is to apportion the amount to be paid by each. Section 53 provides that the treasurer of each municipality shall, upon the passing of a by-law, ascertain in the mode therein pointed out, the amount required to be assessed; and proceeds, "and shall certify the amount in a notice to the clerk of the municipality, or if such municipality be a county, then to the clerk of each township, or incorporated town or village therein the amount payable by the same."

Now it is quite clear, though the statute speaks of only one assessment, that there must necessarily be two in all cases where the township, town or village had itself raised money under the act as well as the county.

Then came the act 22 Vic. cap. 15, which provided for a different mode of assessment. Section 88 in the Consolidated Statutes of Canada provides, "That a sum equal to the amount of five cents in the dollar on the assessed yearly value," or a like per centage on the interest, "at six per cent per annum on the assessed value of all the assessable property in any municipality