

refused to convey such allowance to the owners of the lots.

*Held*, that if the travelled road had been given in lieu of the original allowance as alleged, the owners of the lots who had taken possession of such allowance would have a title to it, under sec. 334, 338 of the Municipal Act, 29-30 Vic. ch. 51; that there was evidence which would well warrant a jury in finding that it had been so granted; and that the by-law should therefore be quashed, leaving the question to be determined by action.

WILSON, J., dissented, on the ground that the applicant was bound to make out a clear case to deprive the public of their right to the original allowances and that he had failed to do so.—*Burrill and the Corporation of the Township of Marlborough*, 29 U. C. Q. B. 119.

INLAND REVENUE ACT—31 VIC. CH. 8, SEC. 130  
—RIGHT OF APPEAL TO Q. S.—*Held*, that no appeal would lie to the Quarter Sessions from a summary conviction under the Inland Revenue Act, 31 Vic. ch. 8, sec. 130, for possessing distilling apparatus without having made a return thereof: for that such conviction was for a crime, and therefore not within Con. Stat. U. C. ch. 114.—*In re Lucas and McGlashan*, 29 U. C. Q. B. 81.

## ONTARIO REPORTS

### QUEEN'S BENCH.

(Reported by C. ROBINSON, ESQ., Q. C., Reporter to the Court.)

#### WRIGHT V. GARDEN AND WIFE.

*Married women—Contract by—C. S. U. C. ch. 73.*

*Held*, that a married woman having separate real property is not entitled by Consol. Stat. U. C. ch. 73, to contract debts for its improvement so as to make herself liable individually, *Adam Wilson, J.*, dissenting, or jointly with her husband.

The declaration alleged that the woman married before the 4th May, 1859, without a settlement, and having separate real estate, and after her marriage employed the plaintiff to repair a house on it, for which neither she nor her husband would pay.

*Held*, on demurrer, that the action would not lie.

[28 U. C. Q. B. 609.]

*Declaration*—For that whereas the defendant Elizabeth Sarah Garden was before and at the time of the making of the agreement hereinafter mentioned, and still is the wife of the defendant John George Garden, and was married before the 4th of May, 1859, to the said defendant J. G. G., without any marriage contract or settlement. And whereas the defendant E. S. G., before the said 4th day of May, 1859, became possessed to her separate use of certain real estate on which a house is now situate, being, &c. (describing the land), and which has not been taken possession of by her said husband, by himself or his tenants. And whereas the defendant E. S. G., continued so possessed of said lot of land and premises up to and at the time of

the making of the agreement hereinafter mentioned, and still is so possessed. And the defendant E. S. G. being so possessed of said property to her own use, and in the management and enjoyment of her said property being desirous of improving the house on said premises, applied to the plaintiff, being a carpenter, to make such improvements. And thereupon, in consideration that the plaintiff, at the request of the defendant E. S. G., would make certain repairs and improvements upon and to the said house so belonging to the said E. S. G. as aforesaid, according to her directions, so as to enable her, the E. S. G., more fully to have and enjoy her said property, she, the said E. S. G., promised the plaintiff to pay him the reasonable value of the work so to be done by him upon the said house. And the plaintiff, relying upon the said agreement, and in a reasonable time in that behalf, did do and execute divers works, repairs, and improvements, to and upon said house in all respects in accordance with the directions of the said E. S. G., which said works, repairs, and improvements, were reasonably worth a larger sum, to wit the sum of \$1000; and all conditions were fulfilled, and all things happened and were done, and all times elapsed necessary to entitle the plaintiff to maintain this action, yet the defendants J. G. G. and E. S. G. have not, nor has either of them paid the plaintiff the value of the said works, or any part thereof, but the same and every part thereof remains due and unpaid.

Demurrer, on the grounds, 1. That the said defendant being a married woman at the time of making the said contract, as appears by the said declaration, could not by reason of her coverture legally make a contract such as in the declaration is alleged. 2. That it is not shewn what work was done, or the nature of the work done by the plaintiff for the defendants.

The case was argued during Hilary term last. *Bell, Q. C.* (of Toronto), for the demurrer, cited *Royal Canadian Bank v. Mitchell*, 14 Grant, 418; *Emrick et ux. v. Sullivan*, 25 U. C. Q. B. 105; *Kraemer v. Gless*, 10 U. C. C. P. 470; *Chamberlain v. McDonald*, 14 Grant, 447.

*Harrison, Q. C.*, contra, cited *Johnson v. Gallagher*, 4 L. T. Rep. N. S. 72, 7 Jur. N. S. 273, 30 L. J. Chy. 298; *Hall v. Waterhouse*, 12 L. T. Rep. N. S. 297, 11 Jur. N. S. 861.

RICHARDS, C. J.—The question arising in this case is whether a married woman having separate real property which, under the Consol. Stat. U. C. ch. 73, she is entitled to have, hold and enjoy, "free from the debts and obligations of her husband, and from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried," can contract, either expressly or by implication of law, a debt for the improvement of that property, without the consent of her husband, so as to make them jointly liable in an action for the debt so contracted, or to make her individually liable to be sued at law for the debt so contracted after marriage, though such improvements may enable her to enjoy such property in a more full and ample manner than she could have done had they not been made.

No express authority is given under the statute to a married woman to contract debts after marriage, and it seems conceded from the different