

ENFORCEMENT OF MARRIED WOMAN'S CONTRACT—BENCH AND BAR.

foreshadow legislative changes in that direction. Thus Vice-Chancellor Malins in an elaborate judgment in *Pike v. Fitzgibbon*, 28 W. R. 667, decided that the written engagement of a married woman binds all separate estate belonging to her at the date of the judgment in the action, whether it belonged to her at the time of the engagement or was afterwards acquired; that it was immaterial whether or not she had any such estate at the time of the engagement; and moreover that such property was bound, even if it was originally subject to restraint on anticipation, provided that before the judgment the restraint had become inoperative by the death of husband. And the still later case of *Flower v. Buller*, 28 W. R. 948, extends the doctrine of *Pike v. Fitzgibbon*, and decides that a married woman may bind her separate estate in expectancy under a will by charging it in writing (her husband also joining) for advances made to the husband; and this although the estate in expectancy was one under the will of a living person. Some of the positions advanced by Denman, J., (who sat for Fry, J.) appear to be, but are not necessarily, at conflict with views enunciated in some parts of the judgments in *The Standard Bank v. Boulton*. But we are not aware of any authority going so far as the decision in *Loughead v. Stubbs*, touching the liability of a married woman on a contract respecting her real estate, or her interests in expectancy therein.

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The question has been raised in England as to the propriety of a judge's son practising in his father's Court. The *Law Times* thus alludes to the subject:

"An incident in the Bristol County Court raises a question which, we think, is of the utmost moment to the Bench and the Bar. A son of the judge appeared as counsel before him, and

the counsel on the other side declined to go on with the case, as we gather, on that ground alone. We think the judge was wrong in suggesting that this step could in any sense be an insult to him. It is in the highest degree inconvenient, in cases where a judge sits to try cases alone, that his son should practise before him. This view has been taken very strongly by Sir James Hannen. That it has not been taken by Sir R. Phillimore has caused much soreness and adverse comment. The ground upon which we agree with the objecting counsel at Bristol is, that it is quite impossible for a judge under such circumstances to escape the criticisms of suitors who are defeated before him when opposed by his son. They may be unfair, but they will be made, and the consequences must be most prejudicial to the administration of the law. County Court judges are not just now so favourably regarded that they can allow their Courts to be made the means of advancing their relations, and they should discourage solicitors in their districts from retaining the services of those intimately connected. We do not agree that there is any analogy between practising in County Courts and at assizes. To say that a barrister should never appear in a court presided over by his father may be unreasonable. But we most emphatically condemn the practice of barristers adopting a court in which to practise over which their fathers do preside or may preside alone."

The *English Law Journal* takes similar ground:—

"There is, no doubt, an impression abroad that the judge is likely to turn a more favourable ear to the arguments of his son than to those of other advocates. In the United States the impression has taken so deep a hold that an attempt has actually been made to pronounce a father disqualified, on the ground of interest, to try a case in which his son is engaged. Such views of the situation are, it is needless to say, altogether without foundation. Judge's sons cannot be estranged from the bar because their fathers were eminent lawyers before them. We do not for a moment believe that a single case on record has been decided in favour of a particular party because that party happened to be represented by the judge's son.

When so much is said, the subject however, is not exhausted. It is a great deal more likely that judges will take a sort of malicious pleasure in non-suiting their sons than put themselves out of the way to help a son's client over a stile. The very feeling that he may be supposed to be influenced will, in a refined nature, if it produces a bias at all, turn it against the object that it is expected to favour. Lord Blackburn once said that the Chief Justice, having tried and