

MARCH 21ST, 1903.

DIVISIONAL COURT.

SHUTTLEWORTH v. MCGILLIVRAY.

Husband and Wife—Gift of Chattles by Husband to Wife during Coverture—Seizure by Subsequent Execution Creditor of Husband in Conjugal Domicil.

Appeal by claimant in an interpleader issue from the judgment of the 1st Division Court in the county of Middlesex in favour of plaintiff, who was an execution creditor of defendant, and had seized under execution three pictures, which were claimed by defendant's wife. It appeared that between the years 1895 and 1898 defendant had purchased with his own money the pictures in question, and handed them to the claimant, his wife, telling her that he gave them to her. One of the pictures was afterwards framed by claimant in a frame given her by her mother. The three pictures were then hung up in the house occupied by the defendant and the claimant, and remained there until they were seized under plaintiff's execution.

The appeal was heard by STREET, J., BRITTON, J.

J. R. Meredith, for claimant.

J. H. Moss, for execution creditor.

STREET, J.—There was an actual present gift and delivery by the husband to the wife, sufficient to have constituted a complete gift and to pass the property as between two persons not husband and wife. *Breton v. Woolven*, 17 Ch. D. 416, and *Shaeffer v. Dumble*, 5 O. R. 716, were decided under the law before 1884. By the Act of that year (now R. S. O. ch. 163, sec. 3) a married woman's disability to receive and hold personal as well as real property by direct gift or transfer from her husband, was done away with. The pictures became her property by her husband's act. The subsequent possession was hers, although the house was occupied by her husband and herself: *Ramsay v. Margrett*, [1894] 2 Q. B. 18; *Kelpin v. Rattey*, [1892] 1 Q. B. 582. The true construction to be placed on sub-sec. 4 of sec. 5 of the Act, when read with sub-sec. 1 of sec. 3, is to place the wife precisely in the position of a feme sole with regard to property transferred to her by her husband during coverture; and therefore she can hold the property against his creditors unless the transfer is made for the purpose of defeating them; and there was no evidence of such a purpose in this case.

Appeal allowed with costs, and judgment to be entered for claimant with costs.

BRITTON, J., gave reasons in writing for coming to the same conclusion.