

3rd. Waste in pulling down and erecting buildings on the estate.

The appellant denied all this waste and fraud, and maintained that she had a right to give her husband a power of attorney.

The evidence is very voluminous and in many parts of it rather difficult to be understood.

With regard to the first point respondent relies on these words: "And it is further—more my will and wish that neither of the husbands of any of my said daughters, nor any of my daughters' future husbands shall have any power over, control or interference in any manner with the foregoing devise and bequest to them, but shall be as absolutely free from such power, control or interference as if they had remained unmarried and single."

We do not think that the interpretation to be put on that clause is that the wife shall not be aided in her administration by her husband, but that the husband shall not have the control of his wife's share of the estate.

Before proceeding to examine the evidence it is necessary to examine a grievance complained of by appellant. She complains that the testimony of her husband should not have been excluded, and that it was competent to the Court, to allow the husband to be so examined. The appellant relies on the art. 252 C. C. P. and on 35 Vic. c. 6, sec. 9. We need not enter upon this question in the present case, for the judge has not permitted the introduction of this evidence, and we do not think that under the circumstances it would be our duty, even if we had the power, to send back the record in order to allow Dr. Thayer to be examined. It is evident from his wife's testimony that he is the party to blame, if blame there be, and allowing him to speak would simply be permitting him to disculpate himself under oath. It is unnecessary for us, therefore, to determine in the present case, whether appellant is strictly right in saying that the terms of the Act allow the wife to examine her husband as her witness if he be her agent. But the words of the statute are, "Whenever such examination shall be allowed, it shall be as unrestricted as would

have been that of the other consort, whether as regards the admissibility of verbal evidence or otherwise." How far is the evidence of the other consort unrestricted? So far and no further can the husband, agent, be examined.

The evidence of Mrs. Thayer, covering twenty-one pages of the factum of respondent, is next to valueless. It confirms what the appellant does not seek to conceal, that she knows personally little or nothing of the affairs of the estate. Her husband manages everything with her consent, and if his administration is bad she is responsible. On one point her evidence is important, it is as to the ring given her by Mr. Decker. But we do not think this gift can be characterized as evidence of fraud. The acceptance of a present of this sort would require to be brought into connection with some sacrifice of the interests of the estate to warrant a Court in presuming it to be fraudulent.

The charge most insisted on at the argument was the transaction with Miss Cressy. It seems this person has been living in Dr. Thayer's house as "a lady friend" off and on for nearly nine years, it would seem almost all the time she has been in Canada. Who she is, how she came to be an inmate of Dr. Thayer's family, is surrounded with some mystery. They became acquainted, so far as we can learn, in an hotel, and her position in the family is not that of a servant. She receives no remuneration. It is not said that she is a boarder, but we are told she is a person of private means. One thing, however, is evident, she has been an inmate of Dr. Thayer's house for years, and while residing there on the 30th April, she leased from him a vacant lot of land for five years, on the condition that she should pay the taxes, that she should expend \$600 on buildings on the property, that she should pay no rent for the first two years, and \$50 a year for the last three. Within four days—on the 3rd May following—Miss Cressy re-leased these premises to Mr. Foley for five years for \$500, and she got from him \$250 cash in advance. She swears at first that she made the bargain with Foley herself, but being pressed, it turns out that Dr. Thayer opened communications between them with regard