the express ground that she as plaintiff constituted herself a single woman for the purposes of the suit, and must take the consequences of disobeying the orders of the court made upon her as plaintiff.

I do not think that these cases warrant the application that is made. According to the English cases the general rule is that the husband is in contempt, and is punishable by attachment for his wife's default. If she fail to answer he is liable to attachment, although he answers himself; and he is only excused upon shewing his inability to get his wife to answer. By the practice of this court, there being no attachment for want of answer, an order for the wife to answer separately goes as of course in a proper case, after the expiration of the time for the husband and wife to answer, in order to the bill being taken *pro confesso* against the wife, and I am informed that in this case such order has been obtained.

An attachment will issue in England against a married woman for not answering after order obtained that she shall answer separately; but it does not seem to me to follow that she is to be treated as a *feme sole* in all subsequent proceedings in this court, because she has allowed the bill to be taken against her *pro confesso*. The order to answer separately has not been obtained by her; but is a proceeding taken by the plaintiff, being the only course by which he can get on in his suit.

The general rule, then, appears to me to be untouched, that the husband shall answer for the wife's default unless he shews some reason for being exempted. She is assumed to be under his control, and he must shew the fact to be otherwise. And this rule will apply much more forcibly in regard to the act, sought to be enforced here, than in regard to an answer, for it may be impossible for a husband to prevail upon his wife to put in an answer upon her oath; and the court would punish a husband for contempt who by threats compels a wife to put in an answer—(*Exp. Halsam*, 2 Atk. 49,) but the preparing and bringing in of accounts would, as a matter of business, more naturally devolve upon the husband than the wife; though of course her oath would be requisite, and he might be able to shew that he was unable to prevail upon her to do what was necessary.

The nearest case that I have found to the present is that of *Scarrow* v. *Walker*, referred to in the last edition of Smith's Practice page 542, where an order for a sergeant-at-arms having been made against a *feme sole*, she married, and an order was made that the husband and wife should put in an examination within one month after personal notice, or in default, that the sergeant-at-arms should go against the husband.

The case of the *Attorney-General* v. *Adams*, (12 Jurist, 637,) is a strong case against the attachments issuing against married women; the woman in that case had not gone by her husband's name; when the subpœna was served she stated that she was unmarried, and throughout the proceedings in the suit she was treated as unmarried; she was attached for want of answer, and committed to prison, and the fact of her marriage was first discovered upon her application to be discharged. Lord *Cottenham* made an order for her discharge, and refused to impose as a condition that no action should be brought.

The distinction that obtains where a decree is made against a married woman is important upon the same point. The general rule is, that decrees are enforced *in personam;* but the case of a decree against a married woman is a recognised exception to the rule.

The case of *Pemberton* v. *McGill* is referred to in a note to the last edition of Smith's Practice (page 275, n. 4, 25 L. J., Ch. 49), where, as I infer, process was ordered against a married woman. The case is thus stated: "A *feme covert* executrix, beneficially interested under a will to her separate use, living apart from her husband, had, without proving the will, possessed herself of the assets, and parted with a portion of them. In a suit by her co-executor she had appeared and answered separately, it was held that she could not by her converture protect herself from answering as to the proceeds of the assets, of which she possessed herself." The order was probably made against the wife in consequence of the fact of her living apart from her husband. Upon the whole, I think the application must be refused.*

* This case was subsequently affirmed in appeal.

Ross v Steele.

Sale under decree—Parties to deed.

A mortgagor or his heirs are not proper parties to a conveyance of the estate to a purchaser at a sale under the decree of the court.

In this suit a sale had taken place under the decree of the court, of certain premises mortgaged by the ancestor of the infant defendants, who were made parties to the conveyance by the solicitor of the purchaser, so that it became necessary for the conveyance to be approved by the judge in Chambers, so far as the interests of the infants were concerned; but

Spragge, V. C.—This conveyance is submitted for my approval by reason of the infant heirs of the mortgagor being made parties. The conveyance is to a purchaser at a sale under the order of this court. I have held that the infants are not proper parties under such circumstances, and I find that the same has been held in England in *Re Williams*, (21 L. J., N. S Chy. 437.) I think the mortgagor or his heirs not proper parties to a conveyance to a purchaser at the sale.

Cooney v. Girvin.

Married woman—Motion by—Security for costs.

Where in the course of a cause it becomes necessary for a married woman, a party to the suit, to make an application exclusively on her own behalf, she can do so, only, by her next friend.

This was an application on behalf of the defendant Arabella Girvin, who was made a defendant to this cause with her husband, for an order on the plaintiff to give security to her for such costs as she might incur in defending the suit.

G. D. Boulton, contra, stated a similar application had been refused by his Honor *V. C. Esten;* but

Spragge, V. C.—The application made before my brother *Esten* was made by the wife on behalf of herself and her husband, and was refused on that ground probably, on the authority of *Oldfield* v. *Cobbett*, (3 Beav. 432.) This application is by the wife alone for security for costs. It is objected that she has not applied to answer separately. I should not think that a necessary preliminary, but the rule is, that a motion by a married woman can only be made by her next friend. *Pearse* v. *Cole*, (16 Jurist, 214.) The application must therefore be refused.

Crooks v. Street.

Sale under decree—Paying purchase money into court.

A purchaser of real estate, at a sale under the decree of the court, will not be ordered to pay the amount of his purchase money into court until the title has been accepted or approved of.

In this case a sale by auction of certain real estate had taken place under the decree of the court, at which one James Metcalfe had become the purchaser of a portion of the estate sold, who having neglected to pay in his purchase money after several demands made upon him for that purpose, a motion was made by *Morphy*, for the plaintiff, for an order directing the purchaser to pay the amount of his purchase money into court.

Hawkins, contra

Per Curiam.—This is an application for an order that Metcalfe, the purchaser of a portion of the property sold under the decree in this cause, may pay his purchase money into court.

This sale took place on the first of June, 1859. Ten per cent. was paid at the time of sale, in accordance with the conditions, and the residue was to be paid, and the conveyance executed, on the 22nd of August.

An affidavit has been filled in opposition to the motion, in which the solicitor for the purchaser states that he had applied repeatedly to the plaintiff's solicitor for an abstract of the title, but that up to the 22nd of August no abstract had been delivered; and Mr. Hawkins contends that the motion is irregular inasmuch as the title has neither been accepted nor approved, although he admits that an abstract was delivered a few days before the motion.

The practice upon this point is not so clear as we might have expected to find it; and certainly the course pursued by the plaintiff's solicitor in this case, has been, for some time, the uniform practice of this court. But it would seem nevertheless, the objection is well founded.

It is clearly settled now, although the point appears to have