

## EQUITABLE EXECUTION—THE LATE CHIEF JUSTICE MOSS.

that in this last case Moss, C. J. observes that the necessity of obtaining equitable execution would seem to be very much diminished by the extension of the sheriff's powers to the sale of every interest over which the execution debtor has a disposing power exercisable for his own benefit without the assent of any other person (p. 23.). But a very marked limitation has been indicated as the true construction of this clause of the statute by Proudfoot, V. C., in *Allen v. Edinburgh Life Assurance Company*, 29 Gr. 310: namely that the words "disposing power" must receive their ordinary meaning as estates which the party can deal with by means of the exercise of some power in that behalf without the assent of other persons. In an earlier case the Chancellor thought the statute was meant to embrace any and every interest which the execution debtor might possess for his own benefit disposable by himself: *Williams v. Reynolds*, 25 Gr. 49. But this point was not argued, and the Vice-Chancellor adheres to his view in a later adjudication upon the same case: *Allen v. Edinburgh*, 26 Gr. 192. So that the present judicial construction is rather embarrassing as to the effect and comprehensiveness of this enactment.

The unsatisfactory position of the law is also clearly brought out by the decision in *Fisken v. Brooke* already referred to. Real and personal estate was there left by the defendant's father in such a way that the whole formed one fund out of which the defendant and his wife were to have their support and maintenance in a manner suitable to their rank and station. But it was held that the handsome income derived from this source was not to be reached by any process or by any court for the satisfaction of the husband's creditors. This we submit is not a satisfactory state of the law, but is one which urgently demands a legislative remedy. And if it be within the bounds of possibility, let that law be so plainly expressed that the wayfaring man, unless he be withal a fool, may understand what he reads. It is surely a matter of extreme re-

gret that the time of everybody should be wasted, and much money of the long-suffering client spent in endeavouring to find out what is meant by current legislation. What a commentary upon lucidity of legislative expression is the long line of discordant authorities upon the law relating to married women, and the law relating to mechanics' liens. It would certainly be desirable in these and similar cases to invoke the aid and experience of the judges in framing new laws or in modifying old laws on such subjects. And such emphatically should be the case in reference to the new laws relating to process and procedure impending over us; the views of the judges should be ascertained, and, as far as possible, given effect to.

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It is always a difficult task to frame, in language adequate to the subject, a just estimate of a departed friend, especially when he has filled with distinction, positions of honour and responsibility. The language of eulogy naturally wells up from the heart; and by the indifferent reader it is interpreted with some deduction on the score of partiality more or less to be expected. And yet, when all is done, a writer has too good reason to fear that some effective strokes are wanting to complete the picture. It is a standing reproach to eulogies of the sort, whether graven in marble or imprinted on paper, that they are apt to be fulsome. Certainly, vanity or affection has often erred in this respect, wilfully sometimes, but often with a vision blurred by the mist of tears. On the other hand, truer and more vivid impressions are gained under bereavement, not clear to the inward sight before. Forgotten or heedlessly noted beauties of character are disclosed with a fullness not hitherto attained; and those faults and foibles which may have assumed undue proportions for us in life, are dwarfed in the immeasurable distance across the gulf