

terest thereon. The contestants disputed the claim. The judge having found all questions of fact in favor of the claimant.

Held, that the fact of the claimant being the wife of the insolvent did not debar her from proving against his estate as a creditor, but *held*, that under the circumstances the question was a fair one for judicial enquiry, and no costs were allowed the claimant.

[BROCKVILLE, McDONALD, J.J.]

The insolvent made an assignment in April, 1875, and amongst other claims filed against his estate was one of his wife.

1871, April 20, To money lent.....	\$1300 00
To five years interest on same	
at 6 per cent per annum...	390 00
	\$1690 00

The inspectors of the estate contested the claim and put in thirteen grounds of objection, which may be summarised as follows: 1. Claimant was wife of insolvent, and not entitled to rank; 2, payment; 3, that the moneys were a gift to insolvent from his wife; 4, that claimant allowed insolvent so to deal with the moneys, that between him and his creditors, other than claimant, the property purchased therewith, became the property of insolvent, and it would be a fraud upon other creditors to allow her to rank equally with the others; 5, never indebted; 6, moneys belonged to insolvent; 7, the claim was a fraud upon creditors other than insolvent; 8, the moneys claimed were proceeds of equity of redemption in certain lands sold by one W. McC. under mortgage from insolvent, or balance or residue of the proceeds of sale of land, after debt and costs of W. McC., and it would be a fraud upon other creditors to allow the claimant to rank &c.; 9, claim did not accrue within six years before assignment; 10, claim did not accrue within six years before filing of claim; 11, claimant, at time alleged debt was contracted, was in possession of property of insolvent of an equal or greater value than amount claimed; 12, the moneys were trust funds, and insolvent never received benefit from, or had the use of the moneys; 13, that the moneys were lent by claimant to enable her to rank.

The claimant in her answer admitted being the wife of the insolvent but denied all the other allegations of contestants, and issue having been joined, the matter was brought for trial before the Junior Judge of the County Court of the United Counties of Leeds and Grenville.

The evidence was to the effect that insolvent at one time owned some real estate in Brockville, which he mortgaged to his wife's brother one W. McC., and subsequently sold and conveyed

to him absolutely. Several years afterwards W. McC. sold the property, and after taking an account of all it had cost him, found that he had about \$1300 to the good, and in 1871, made a present of this amount to his sister, the wife of the insolvent, who loaned it to the latter, there being no memorandum or writing to evidence the loan, but insolvent promising claimant that he would give her as much for it as any one else would, and at all events 6 per cent. The contestants contended that the insolvent had an equity of redemption in the real estate, and that the \$1300 really belonged to him and was not W. McC.'s to give.

The judge found all the facts in favor of the claimant.

The contestants urged that notwithstanding the finding of the judge, the claimant could not recover, and judgment was reserved, pending argument.

On a subsequent day the parties appeared by counsel.

French for the contestants, contested that the Married Woman's Act of 1859 did not apply to Mrs. Dangerfield who was married before it was enacted. He cited *Commercial Bank v. Lett*, 24 U.C. Q.B. 552; *Story's Equity Jurisprudence*, 1374; *White & Tudor's Leading Cases* 457, 459, 540; *Gardner v. Gardner*, 5 Jurist, N. S. 975; *Lewin on Trusts*, 550, 537 and 552; *Kerr v. Read*, 23 Grant 529; *Scott v. Hunter*, 14 Grant 377; *Healey v. Daniels*, Ib. 633; *Bankland v. Rose*, 7 Grant 440.

Senkler for claimant referred to *White & Tudor's Leading Cases* 447; *Woodward v. Woodward*, 9 Jurist N. S. 882, *Story's Equity Jurisprudence*, 1373.

McDONALD, J. J. gave judgment in favor of the claimant, but held that the case was a proper matter for enquiry, and that, under the circumstances, the inspectors were justified in contesting the claim, even although they had done so unsuccessfully. He allowed no costs to the claimant, but allowed the inspectors their costs out of the estate.*

* In the same matter was a claim for wages, and for money lent to insolvent by the son of insolvent, who was an infant. The inspectors of the estate having disputed the claim, and all the facts having been found in favor of the claimant.

Held, that the claimant was entitled to prove against the estate, that his being an infant did not preclude him from recovering from his father, the contracts having been proved.