

RECENT ENGLISH DECISIONS.

out that although a married woman could not contract or convey property (not separate) except so far as by common or statute law she was enabled to join with her husband in doing so, she might always, when her interests required it, sue and be sued jointly with her husband, or (in equity) apart from her husband by a next friend; and that one consequence of the *locus standi in curia* of a married woman for the purpose of asserting or defending her rights of property (whether with her husband or by a next friend), and of having the rights of others asserted against her, was that her interests in the subject matter of the litigation to which she was so made a party, might be bound by way of transaction or compromise—which has been in modern times extended to compromises out of as well as in court. It was on this foundation, he says, that the forms of judicial assurance, by which freehold estates of married women were alienated at common law, down to the passing of the Act for the Abolition of Fines and Recoveries, originally rested. But, he continues, “there is no case in the books, before the Act for the Abolition of Fines and Recoveries, in which a married woman was held bound, on the footing of contract (without fine), to alienate her freehold lands or hereditaments not settled to her separate use. And the means of alienating such lands, substituted by those Acts for fine, although no longer founded on the fiction of judicial transaction or compromise, can only be made available by following the procedure which those Acts prescribe.” This brings him down to the crucial question in the case before the House. There a married woman, with a view to a compromise of a suit for restitution of conjugal rights brought by the husband, had signed a document by which it was stipulated that she should release part of a jointure rent-charge to which she was entitled by an anti-nuptial settlement. The House of Lords now decided that, even if a final agreement had been come to, the wife was not bound by it, there having been no acknowledgment as

required by the Act for the Abolition of Fines and Recoveries.

Passing over *Danford v. McAnulty*, p. 456, which will be found among the Recent English Practice Cases, in our last number, the case of *Maddison v. Alderson*, p. 467, is reached, this being the last stage of this interesting case, which was noticed at length in this journal, Vol. 18, p. 334, in connection with the case of *Roberts v. Hall*, 1 O. R. 388.

PROMISE TO MAKE A WILL—PAROL CONTRACT—PART PERFORMANCE.

In the judgments of the House of Lords, which we are now about to notice, “the strict boundaries of the law on the subject of part performance exempting a case from the operation of the statute of frauds are emphatically fixed,” to use the words of Mr. Chancellor Boyd, in his judgment in the recent case of *Campbell v. McKerricher*, (Sept. 15, 1883,) noted in our present number. The facts of the two cases were curiously similar; in both there was an alleged service by the plaintiff, for many years, on the faith of a promise by the deceased to leave him a certain property by will, and in both a will was produced in evidence, or sworn to have been made, actually leaving the property to the plaintiff, but inoperative in the one case from want of proper attestation, and in the other by reason of the execution of a subsequent will, and, to again revert to the words of the Chancellor, in *Campbell v. McKerricher* the Chancery Divisional Court “but adopts the principles of law laid down” in the case of *Maddison v. Alderson*, the effect of which was, in both cases, to find the plaintiff not entitled to recover. Dealing, then, with the doctrine of equity as to part performance of parol contracts, Lord Selborne commences by saying that he agrees with the observation of Lord Justice Cotton in *Britain v. Rossiter*, L. R. 11 Q. B. D. 130, noted in this journal, *supra* p. 268, that it is not an adequate explanation of this doctrine to say summarily that it rests upon the principle of fraud, tha