In regard to the second objection, we cannot see why a writ should not issue for one out of the jurisdiction. In *Hyde* v. *Whitfield*, the transactions had occurred in the West Indies, and it was argued if the writ continued, how the account could be taken, and accordingly the writ was discharged. In *Smith* v. *Nethersole*, the reason of the discharge was that the plaintiff came into England colorably. But here there are no such questions, there is no account, and no duty, save the duty of the writ, and why the fact of the wife being out of the jurisdiction is urged for the discharge of the writ, I cannot understand.—Looking also at the peculiar nature of the jurisdiction, and the words used in the Act, "any wife." I am of opinion that they apply to those residing out of the province as well as those within.—Whenever the husband goes away from his domicile, no power of the Court can follow him. The domicile of the wife is the domicile of the husband, and she has no other as long as the marriage holds. The writ of *Ne Exeat* was originally founded upon a debt due, and if that could not be found, no writ could issue. But here there is no proof of debt required. It is a new power given the Court to provide a married woman with some security for maintenance, by virtue of the writ, and not as it was first intended as a security for a debt. The motion, therefore, is discharged with costs.

IN BANC.

COTTON v. CORBY.

Dismissal of Bill—Appeal—Suspension of Decree.

The Court has full power, notwithstanding the Error and Appeal Act of 1857, to suspend the operation of its decree, so as to allow an appeal to be made to the Court above. 29th January, 1859.

The Court having given judgment this day, dismissing the plaintiff's bill, the defendant was about to proceed with his execution to place the same in the sheriff's hands before night. The plaintiff immediately on the delivery of the judgment intimated his intention of appealing to the Court of Error and Appeal, and asked that the operation of the decree might be suspended until the writ of appeal could be obtained and the bonds filed.

A. Macdonald, for the plaintiff, asked that the operation of the decree be suspended. The plaintiff would if directed pay the money into Court.

S. Richards, Q. C. for the defendant, opposed the suspension of the decree. The plaintiff's bill had been declared improperly filed, and the defendant should not now be further restrained from proceeding at law. Besides the Court had no power further to injoin him. He referred to the Error and Appeal Act and Rules.

THE CHANCELLOR delivered the judgment of the Court.—There is no doubt but this Court has full power over its decrees as to the time of their operation. In England, it was competent to the House of Lords in cases of appeal to suspend proceedings. And the Court of Chancery there has at all times full power over its own decrees to suspend their operations, and has frequently exercised it, owing to the great delay which formerly occurred in carrying out the appeal.

In the case of the *Mayor of Gloucester* v. *Wood*, 3 Hare, 150, Vice Chancellor *Wigram*, though he dismissed the bill, refused to allow the money to be taken out of Court, until the appeal could be made. In this country the legislature has laid down the reverse rule from that in England, that not staying proceedings in appeal should be the rule, and staying them the exception.

I take it to be clearly our duty to stay our decree, as otherwise irreparable injury may be the result—as in the case of an ejectment for instance. In the present case, execution may be put in, and the whole state of things may be altered before the appeal can be made; and it is therefore a much more reasonable course to stay the decree. I cannot agree to the doctrine that because of the late Error and Appeal Act, this Court cannot exercise jurisdiction This Court has all the power it ever had, and the new law regulating the power of appeal has not altered our practice. We determine on the equity of the Act—as the case now before us scarcely comes within it—and as irreparable mischief might be done were the decree not suspended. On paying the money into Court and giving security the decree is to be stayed until the appeal be entered.

BABY v. WOODBRIDGE.

Practice—Master's Office—Notice to Mortgagor.

Under the orders of February, 1858, relative to foreclosure suits, where the bill is taken *pro confesso* against the mortgagor, it is not necessary to serve him with the notice set forth in Schedule B to said orders

(17th December, 1858.)

This case coming up on further directions, and it appearing that the Mortgagor had not been served in the Master's office with the notice set out in Schedule B of the orders of the 6th February, 1858, relative to foreclosure suits, and the bill having been taken *pro confesso* against him, it was *held* by

ESTEN & SPRAGGE, V. CC., (THE CHANCELLOR *dissentiente*), That when a bill in suits for foreclosure or sale, is taken *pro confesso* against the mortgagor, it is not necessary to serve him in the Master's office with notice under the orders of February, 1858.

[*Note by Reporter.*—The same judgment was given in the case of *Murney* v. *McLellan*, decided on the same day.]

(CHAMBERS.)

DEXTER v. COSFORD.

Lis Pendens—Discharge—Registry of Decree.

Where after certificate of *lis pendens*, the Bill is dismissed, it is sufficient to register the decree dismissing the Bill, as a discharge of the *lis pendens*.

(5th February, 1859.)

In this case the Plaintiff's Bill had been dismissed after the certificate of *lis pendens* had been registered, and application was now made for an order to discharge the certificate.

SPRAGGE, V. C., All that could be done with the order to discharge would be to register it, and as you have your decree dismissing the Bill, you can register it, and that will be a sufficient discharge of the *lis pendens*.

GORDON v. WEAVER.

Practice—Married women's answer—Affidavits.

Where a married woman is interested in an estate and no joint answer is put in by herself and her husband within the time limited, application may be made to allow her to put in an answer separate from her husband, the affidavits to state why her answer is required.

25th October, 1859.

This was a motion for an order that a married woman put in answer separate from her husband. The Bill was filed on the 15th October, 1858, and in support of the motion an affidavit was read stating in general terms, that the answer was required for the promotion of justice.

ESTEN, V. C. The practice is, if the inheritance is the wife's, to serve the husband and wife and let them put in a joint answer.—Or when the time for answering has expired, to make application to allow her to put in an answer separate from her husband. The affidavits must state the grounds on which her answer is sought for.

HURD v. ROBERTSON.

Defective title as to part of estate.

The purchaser of an entire estate which has been divided into shares, is not bound to accept, if the title to one share is defective.

In a case for the investigation of a title, after disposing of several objections it was observed by

ESTEN, V. C. I need not say that a purchaser contracting for an entire estate cannot, if it has been divided into shares, and the title to one share is defective, be compelled to accept the title to the remaining shares.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

WARDSVILLE, February 3rd, 1859.

GENTLEMEN,—As a subscriber to the *Law Journal*, I wish to put a few queries for your advice, and my guidance, and being at a considerable distance from where I can procure a sound legal opinion, I take the liberty of putting the following