

Glass, Q.C., and *Rogers*, for the widow, contended that it was a gift for life, with remainder to the children. They cited *Armstrong v. Armstrong*, 17 W. R. 570, L. R. 7 Eq. 518; *Audsley v. Horn*, 7 W. R. 125, 26 Beav. 195; *Re Owen's Trusts*, before Vice-Chancellor Wickens on the 26th of May (not reported); *Ward v. Grey*, 7 W. R. 569, 26 Beav. 485; *Crockett v. Crockett*, 2 Ph. 553; *Lambe v. Eames*, 18 W. R. 972, L. R. 10 Eq. 267; * *Jeffery v. De Vitre*, 24 Beav. 296.

Pearson, Q.C., in reply, referred to *Mason v. Clarke*, 1 W. R. 297.

MALINS, V.C., said this was a mere question of the intention of the testator. It was quite clear he meant his property to go to his wife for the benefit of herself and his children, whether she and they took as joint-tenants, or whether she took a life estate with remainder to the children, but it would make a material difference to her which way it went. If he were to look at this will apart from the authorities, what was the testator's intention? What were the probabilities? What must he have meant? Considering it was his main duty to take care of his wife, he should conclude that it was his intention that she should have it all for her life—upon intention only that was the decision he should arrive at. Was he prevented from so deciding by the authorities, which were very contrary? The current of authorities latterly had run in a direction opposite to what it did formerly, and it ran in a way which coincided with his opinion, that when a man gave property by will for the benefit of his wife and children he meant it to be for his wife for life with remainder for the children. There would be a declaration in accordance with that view.

UXBRIDGE COUNTY COURT.

(Before JAMES WHIGHAM, Esq., Judge.)

FLETCHER V. WATTS.

Debtor's Act 1869 (32 & 33 Vic. c. 62) ss. 4 and 5—Bankruptcy Repeal Act 1869 (32 & 33 Vic. c. 83), s. 20, and Schedule of Enactments Repealed (9 & 10 Vic. c. 95), s. 103.

103. Commitment order refused on the ground that the judgment debtor had before been imprisoned for same default. [Law Times, June 3, 1871.]

HIS HONOUR delivered judgment in this case, which raised a question of considerable general interest, viz., whether there can be a second or subsequent commitment for the same default. The judgment in *Fletcher v. Watts* was of the 17th July, 1868, to pay a certain sum by monthly instalments. The present proceeding was a summons under the Debtors' Act of 1869, an enactment which came into operation on the 1st. Jan. 1870. The summons recited the judgment, the sums paid upon it, the residue remaining unpaid, the default of the defendant to pay residue, and required the defendant to appear on the court day to be examined touching his present and past means of satisfying the judgment, and to show cause why he should not be committed for his default. The defendant did not appear. The plaintiff appeared, and gave evidence of the defendant's ability to pay. In the course of the inquiry it transpired that the defendant had already been once imprisoned for the same default.

His Honour referred to the statutes in force on the subject of commitments by the County Courts. The first requiring present notice is the Act of 1846 (9 & 10 Vic. c. 95). Certain sections in it relating to commitment are repealed by the Bankruptcy Repeal Act 1869 (32 & 33 Vic. c. 83, s. 20, and schedule, viz., ss. 98 to 101, both inclusive). The Debtors Act 1869 (32 & 33 Vic. cap. 62 s. 5) (a long and much sub-divided section) enacts that "this section, so far as it relates to any County Court, shall be deemed to be substituted for sections 98 and 99 of the Act of 1846, and that Act (the Act of 1846) and the Acts amending the same shall be construed accordingly, and shall extend to orders to be made by the County Courts with respect to sums due in pursuance of orders or judgments of any other court, that is the Superior Courts, in respect of a judgment for a sum not exceeding 50*l*." Though this 5th section of the Debtors' Act of 1869 is, by express direction of the statute, to be construed as substituted for sections 98 and 99 of the Act of 1846, these sections 98 and 99 do not directly relate to the most important matter dealt with by the material part of the substituted section in the Debtors' Act of 1869, namely, the effect of an imprisonment of the judgment debtor not operating as a satisfaction or extinguishment of the judgment debt.

The material clause on that subject is section 103 of the Act of 1846, which is not repealed, and so far as it is not inconsistent with the more recent enactments is still in full force and effect. It may be mentioned (though the statute is repealed) that 22 & 23 Vic. cap. 57 limited the power of imprisonment to be exercised by the County Court judges, but as it is not now in force it no longer affects the subject. The 103rd section (9 & 10 Vic. c. 95) enacts that no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action in which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant in the same manner as if the imprisonment had not taken place." The enactment in section 5 of the Debtors' Act 1869, given as in substitution of sections 98 and 99 of the Act of 1846, may possibly have been intended to be in substitution for the 103rd section of the Act of 1846. It relates to the same subject, and enacts thus (32 & 33 Vic. c. 62, s. 5): "Subject to the provisions hereinafter mentioned and to the prescribed rules, County Courts may commit to prison for six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment due from him in pursuance of any order or judgment of that or any other competent court, provided, (1), that the jurisdiction to imprison shall, in case of any court other than the Superior Courts be exercised only subject to the following restrictions:—*a* To be made in open court. *b* Wherein it relates to a judgment of a Superior Court only when the amount does not exceed £50. *c* As to County Courts, only by judge or deputy, no other officer. (2) That such jurisdiction shall only be exercised when it is proved to the satisfaction of the court that the person making the default either