

correctly stated the law as it stood before the legislation to remove the disabilities of married women. As to *Thynne v. St. Maur*, it will be observed that the ratio decidendi was the incompetence of married woman to sue and be sued personally and to be answerable in costs. But a married woman may be executrix or trustee or even, it would seem, testamentary guardian, and in case a woman having children marries a second time, she of course remains the guardian of her children as she was under the act before her second marriage. In all these cases she may sue and be sued personally.

Moreover even if a married woman were not answerable for costs it would appear not to be a sufficient disqualification. In *Scott v. Niagara Navigation Co.*, 15 P.R. 409, Boyd C. said: "The primary object of a next friend is not that the defendants may have security for costs, but that there may be some one before the Court to answer for the propriety of the action, and through whom the Court may compel obedience to its orders. So that when the natural guardian of the infant is a pauper or in an insolvent condition the Court will sanction such a person undertaking the conduct of the litigation on behalf of the infant, lest any other rule may amount to denial of justice to the children of poor persons."

The attitude of the Court in *Thynne v. St. Maur* is the more remarkable as the Courts have generally given a liberal construction to legislation for the relief of married women. For instance, it is well settled practice that a married woman suing for an injunction will only be required to give the ordinary undertaking as to damages and her undertaking will be accepted even though she possesses no property at all. In such an undertaking she will be dealt with as a feme sole.

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PROVOCATION AS A DEFENCE IN HOMICIDE CASES.

Manslaughter is principally distinguishable from murder in this, that though the act which occasions the death is unlawful, or likely to be attended with bodily mischief, yet the malice either express or implied, which is the very essence of murder, is presumed to be wanting in manslaughter, the act being rather imputed to the infirmity of human nature; 1 East's Pleas of the Crown, 218; Roscoe's Criminal Evidence, 12th ed., 620. Murder is unlawful