V. C., who granted an injunction, the nature of which sufficiently appears from the above head-note. The husband and wife appealed.

A. Terrell, for the appellants, cited *Johnson* v. *Gallagher*, 3 Deq. F. & J. 495; 30 L. J. R. Ch. 298; *Owens* v. *Dickenson*, Cr. & Ph. 48; *Murray* v. *Barlee*, 4 Sim. 82; 3 Myl. & K. 209, 3 L. J. R. Ch. 184.

Dundas Gardener, for the plaintiff. The Judicature Act, 1873, s. 25, s. s. 8, authorizes the Court to grant an injunction whenever expedient.

JESSEL, M. R., thought, with great respect to the V. C., that the order had been made improvidently, without regard to the settled law on the subject. The general engagements of a married woman, contracted on the faith of her separate property, no doubt bound that property in this sense, that the creditor could obtain a judgment against the separate estate and could then obtain payment out of it. The married woman stood in much the same position as a man did, who, under the old law, could not be made a bankrupt. The creditor could not get mesne process against the property until he had established his right by a judgment. If this were not so, every married woman who depended on her separate estate would be left to starve as somebody alleged that she was indebted to him. According to well established principle and settled law, creditors of a married woman who had obtained no judgment could not interfere with her right to deal with her separate property.

JAMES, L. J., was entirely of the same opinion. At one time there was a notion that the engagements of a married woman were in the nature of charges on her separate estate. But it was afterwards pointed out that the relation was only that of debtor and creditor with a right to go against the particular fund. If there was a charge, then, as was pointed out by Lord Cottenham in the case of *Owens* v. *Dickenson*, different creditors would have priority in the order of date of their charges. The creditor's only right was to get judgment for his debt, and then execution would go against the separate estate. He agreed with the M. R. that a creditor could no more obtain such an injunction against a married woman than against a man.

LUSH, L. J., concurred, holding the law to be quite settled on the point.

[NOTE.—*Imp. Jud. Act, 1875, s. 25, s. s. 8, and Ont. Jud. Act, s. 17, s. s. 8, are identical.*

CLARKE V. BRADLAUGH.

Time from which writ takes effect—Day, fractions of—Fiction of law.

It appeared from the statement of claim that the writ of summons in the action issued on the 2nd July, and that on the same day, but before the issuing of the writ, the cause of action arose. The statement of claim was demurred to, on the ground that the issuing of the writ of summons being a judicial act, must be considered as having taken place at the earliest moment of the day, and, therefore, before the cause of action accrued:—

Held, that the Court could, for this purpose, take cognizance of the fact that the writ did not issue till later in the day than the cause or action accrued, and that the statement of claim was therefore good.

[Q. B. D. June 21; L. R. 7 Q. B. D. 151; 44 L.T.779.

The facts of this case sufficiently appear from the above head note.

The defendant in person, in support of the demurrer, cited *Reg.* v. *Edwards*, 9 Ex. 32, 628; *Wright* v. *Mills*, 4 H. & N. 491, and several other cases.

Sir Hardinge Giffard, Q.C. (*Kydd*, with him), for the plaintiff, contended that the issuing of a writ of summons in an action was substantially the act of the party, and not a judicial act within the meaning of the doctrine above referred to, and that the Court could take cognizance of the fact that the cause of action occurred earlier in the day than the issue of the writ.

DENMAN, J.:—I am of opinion that this demurrer must be over-ruled. . . . No doubt, in several of the cases cited, very strong consequences, consequences which one would hardly have expected to follow from any legal doctrine, have been held to follow from the legal doctrine applied in those cases, which, roughly stated, is that Judicial Acts are referred back to the first moment of the day on which they are done. . . . But I am of opinion that the doctrine in question is not applicable to such a case as this. It is a fiction of law, and the doctrine underlying all the doctrines with regard to fictions of law would be violated if we sustained the defendant's contention. A fiction of law exists for the purpose of doing justice in the particular case. If this doctrine were applied, as contended for, to a writ of summons, it could never tend to justice, but always must tend to injustice. It would be arbitrarily saying that wherever a wrong was