

tiff is entitled to claim under and by virtue of the conveyance of the trustees, if title otherwise good.

Judgment will be for plaintiff with costs.

See Underhill on Trusts, 4th ed., ch. 5.

MACMAHON, J.

DECEMBER 24TH, 1904.

CHAMBERS.

DOULL v. DOELLE.

Arrest — Judgment against Married Woman — Proprietary Liability—Form of Order—Intent to Quit Ontario.

Motion by defendant to set aside an order under R. S. O. 1897 ch. 80, sec. 1, for the arrest of defendant, against whom a judgment was recovered by plaintiffs on 11th April, 1899, which directed that "plaintiffs recover against defendant (a married woman) \$1,310.51, payable out of her separate estate, with the costs of this action and motion to be taxed."

Defendant had paid nothing on account of the judgment, and since the recovery of the judgment and within the past year, the defendant's husband died, so that she was a widow.

W. E. Middleton, for defendant.

F. J. Roche, for plaintiffs.

MACMAHON, J.—Even had defendant not been a married woman, plaintiff's claim being in judgment, an order for arrest should not have been made under sec. 1.

This motion, however, can be disposed of upon the ground that the judgment being against a married woman and limited by its terms to payment out of her separate estate, it is a proprietary liability and not a personal one; and in *Scott v. Morley*, 20 Q. B. D. 120, it was held that since the passing of the Married Women's Property Act in 1882 in England, enabling a married woman to enter into contracts independently of her husband, for which she would be liable in respect of her separate property, a judgment recovered against her is merely a proprietary judgment, and she cannot be arrested under the Debtors Act. . . .

The fact of defendant having become a widow since the recovery of the judgment does not alter the effect of it so as to convert it into a personal judgment against her. And even had the judgment been recovered against her as a widow on a contract entered into by her during coverture, it could only be in the form settled by the Court of Appeal in