

shew what the rule of the Court of Equity is as to charging the separate property of a married woman with the payment of her debts, when it is held free from the control of her husband. In all these cases it is expressly declared that the married woman, whether living separate from her husband or not, is not personally liable on the contract, and that only her estate is liable for her debts. See also the observations of Mr. Justice Gwynne in *Balsam et ux. v. Robinson*, 19 U. C. C. P. 269.

I think the decided cases under our own statute are binding on this court, and I should feel bound to follow them until reversed, even if I doubted their correctness on the point now under discussion, which I do not.

I think there must be judgment for the defendants on the demurrer.

MORRISON, J., concurred.

(To be continued.)

REGINA V. WIGHTMAN.

Forcible entry—Restitution.

The defendant having been convicted at the quarter sessions on an indictment for forcible entry, was fined, but that court refused to order a writ of restitution, and the case was removed here by *certiorari*.

Held, that it was in the discretion of this court either to grant or refuse the writ; and under the circumstances, the verdict being against the charge of the learned chairman, and the prosecutor's case not one to be favored, it was refused. [29 U. C. Q. B. 211.]

O'Brien obtained a rule during last Michaelmas Term, calling on the defendant to shew cause why an order of restitution should not be issued to restore one Fields to the possession of lot 17 in the first concession on the River Thames, in the township of Harwich, in the county of Kent, upon which the defendant illegally entered and forcibly detained Fields from the possession thereof. The rule was drawn up on reading the *certiorari* issued herein and directed to the chairman and justices of the court of general quarter sessions of Kent, and the return thereto, &c.

It appeared from the schedule returned with the *certiorari* that the defendant had been indicted at the court of Oyer and Terminer for the county of Kent, in April, 1867, for a forcible entry, &c., upon the premises in question, which indictment (a true bill being found) was transmitted to the quarter sessions to be tried: that the same was tried in December, 1857, and the defendant found guilty, and fined in the sum of \$50.

The prosecutor, Fields, whose name was on the indictment, was sworn as a witness before the grand jury, but not called on the trial. Several witnesses were examined on the part of the prosecution, and at the close of the case for the Crown the defendant's counsel submitted there was no evidence to connect the defendant with the charge. The learned chairman of the quarter sessions having expressed himself in favor of the defendant, no evidence was adduced on the defence, and he told the jury that the evidence was not sufficient to convict, and recommended them to acquit. The jury, however, found the defendant guilty, and the court imposed a fine of \$50. The counsel for the prosecution then applied for a writ of restitution, which the learned chairman declined to grant, saying that the application might be made to a court.

A copy of the notes of the evidence taken on the trial was returned with the *certiorari*, and from it it appeared that the taking possession of the premises, or rather the house, was in fact done by others and not by the defendant. What the evidence shewed was, that the defendant was at the place shortly after the occurrence, and afterwards got possession of the same. Taking all the testimony, the probability seemed to be that the jury were of opinion that the defendant, who was interested in obtaining possession, procured the other parties to do what they did.

From the affidavit of the defendant filed on shewing cause, it appeared that Fields, the prosecutor herein, brought a suit against the defendant to recover possession of the premises, which was tried in 1866: that he failed in the action, and judgment was given in favor of the defendant: (See the case reported, 17 U. C. C. P. 15): that Fields commenced another action of ejectment, which action had been stayed until security for costs should be given by him. The defendant also swore that he purchased the land in good faith, and at its full value: that he had been in continual possession since 1856, except for the few weeks that Fields had possession of the house, and which possession he swore that Fields procured by collusion with his, defendant's tenant; and he also stated that the parties through whom he claimed had undoubted possession since 1841.

Hector Cameron, during this term, shewed cause, citing *Regina v. Harland*, 8 A. & E. 826; *Rez v. Jackson*, Dra. Rep. 53; *Regina v. Connor*, 2 P. R. 189, *Fields v. Livingston and Wightman*, 17 C. P. 15, 27; *Russ. C. & M.*, Vol. I. p. 431; *Wooltrych Crim. L.* 1125-6.

O'Brien, contra, cited *Hawk*, P. C. Book II., ch. 27, sec. 31; 4 Bl. Com. 148; *Rez. Williams*, 4 M. & R. 471; *Sir Godfrey Kneller's case*, 1 Salk. 151; *Bac. Ab.*, vol. III., p. 716.

MORRISON, J., delivered the judgment of the court.

Upon an examination of the circumstances connected with this case, it is quite evident that the prosecutor and the defendant claim title to the property in question, the defendant and those through whom he claims having had possession of the premises for more than twenty years, with the exception of the few weeks that the prosecutor by some means obtained possession for him, and those parties were expelled, as it is alleged, by the defendant. The jury, contrary to the recommendation of the learned chairman, have found the defendant guilty. What title in fact the prosecutor has, or pretends to have, does not appear, but it seems he obtained possession of the premises through a tenant of the defendant, probably with a view of driving the defendant to an action of ejectment to recover possession, or to try the title; he, the prosecutor, having already failed in an action of ejectment brought by him against the defendant to recover the premises; and, as it is sworn, he has another suit pending for the like purpose, but which is stayed until security for costs is given to the defendant.

Considering all these circumstances, we are not disposed to assist the prosecutor. The court below punished the defendant by a fine of \$50 for the offence against the public peace, and it was