

## HUSBAND AND WIFE—LEGACY TO WIFE—HUSBAND'S DEBT—RETAINER—EQUITY TO A SETTLEMENT.

*In re Briant, Poulter v. Shackel*, 39 Chy. D. 471, Kay, J., determined that the wife's equity to a settlement was entitled to prevail over the right of an executor to retain out of a legacy due to the wife, a debt due by her husband to the testator's estate. The case was one that did not come within the Married Women's Property Act, 1882, which very materially modifies the right of retainer under such circumstances, if it does not altogether abolish it.

## MARRIED WOMAN—GENERAL POWER OF APPOINTMENT—APPOINTED FUND HOW FAR ASSETS—MARRIED WOMEN'S PROPERTY ACT, 1882, s. 1, s.s. 4 (R.S.O. c. 132, s. 3, s.s. 4).

*In re Roper, Roper v. Doncaster*, 39 Chy. D. 482, a question arose as to how far property appointed by a married woman under a general power of appointment, became assets to satisfy her debts; and it was held by Kay, J., that the property appointed would not be assets to satisfy any debts or obligations incurred before the Married Women's Property Act of 1882 came into force, because prior to that Act it had been determined in *Pike v. Fitzgibbon*, 17 Chy. D. 454, that the only separate estate of a married woman which could be made liable for her engagements was such as she had "at the time of contracting the debt or engagement."

## SALE OF BUILDING MATERIALS—INTEREST IN LAND—STATUTE OF FRAUDS, ss. 4, 17—SPECIFIC PERFORMANCE—DAMAGES.

In *Lowery v. Pursell*, 39 Chy. D. 508, a contract was made for the sale of "building materials" of a house with a condition that all materials were to be cleared off the ground within two months, "after which date any materials then not cleared off will be deemed a trespass, and become forfeited, and the purchaser's right of access to the ground shall absolutely cease;" and it was held by Chitty, J., that this was a contract for the sale of an interest in land within sec. 4 of the Statute of Frauds, and owing to the absence of any sufficient description of the vendor in the contract, it was void. He also held that the contract having from lapse of time become at the hearing incapable of specific performance, the equitable doctrine of part performance as avoiding the operation of the Statute of Frauds, did not enable the plaintiff to obtain relief in damages. At p. 514 Chitty, J., draws the distinction between the cases of a sale of "building materials" where the vendor is to pull down the house and where the vendee is to do so. In the former case he seems to agree that the contract would be within sec. 17, whereas in the latter case it comes under sec. 4. The learned Judge appears to have found some difficulty in reconciling his decision with *Marshall v. Green*, 1 C.P.D. 35, where a sale of standing timber, to be cut by the vendee, was held not to be within the 4th section. As regards the other point, he says, on p. 519, that damages can only be given where specific performance could have been decreed, and that it was a substitute for specific performance: See, however, R.S.O. c. 44, s. 53, s.s. 9, which provides that damages may be awarded in addition to, or substitution for, specific performance.