I must observe that the recital relied upon for this opinion is not a recital in the Statute, but in a deed of the petitioners, that the language of it is not the language of the Legislature, nor is it incorporated by the Legislature into their Act; it is set out in a schedule as the thing confirmed and made valid by the Act, but not as a part of it. I have looked with some care into authorities without meeting one which would lead me to treat the recital in this deed as a part of the Act. I do not know whether it is contended that this deed is to be construed, owing to the recital, as only meant to do away with the disability of coverture, and to enable the trustees to act as if such disability did not exist, but I have not so understood the opinions, hereafter to be given, of those from whom I have the misfortune to differ.

I must further add, that no such point, either as to the deed or the Act, is raised by the reasons of appeal, nor was it, to my recollection (though I would not rely on that after the lapse of six or seven months), alluded to during the argument.

It has been suggested that the order on the petition was *ex parte;* but that is not so, as the trustees were respondents, and Mr. Becher appeared by his counsel, and opposed the petition in the interest of the grandchildren. The point, that all the grandchildren, though minors, should have been served with the petition and made parties to it, is not taken in the reasons of appeal, nor was it urged before us in argument. All who might be interested could not have been served; as future born grandchildren would take equally with those *in esse* now; and to serve the infants now living with their parents, in order to give them an opportunity of opposing the petition of their parents, would obviously have been useless for any practical purpose. By the practice of the Court of Chancery, as regulated by the 61st Consolidated Order, and as decided in *King* v. *Keating*, 12 Grant 29, and other cases, trustees sufficiently represent their *cestuis que trust*, though the Court of Chancery, if it thinks fit, may order any of the *cestuis que trust* to be made parties also; and it is plain, in the present case, that the Legislature did not mean that all should be served, for the Act, in express terms, left it to the Court to direct to whom notice of the petition should be given.

We are, however, of opinion that the Act does not affect real or personal property not being within this Province. A majority of the Court are of opinion that this order is appealable. This being so, I am of opinion that it should be varied—by striking out the fifth section and inserting in lieu thereof, "that after such allotment and distribution, the said Master do convey and transfer the respective shares of each of the said petitioners, according to the respective natures of the several parts of such share, unto and to the use of each of the said petitioners, their respective heirs, executors, administrators and assigns, absolutely in severally, the shares of each of the said petitioners, being daughters of the said testator, being so conveyed and transferred for their respective separate use, free from the control of any present or future husband.

I am further of opinion that Mr. Becher was doing no more than his strict duty in opposing this petition, and also in bringing before the Court by means of both appeals the very important question involved in this case and the suits of *Tovey et al.* v. *Goodhue* and others, and that he should have all his costs, charges and expenses in relation to the proceedings in both cases and the two appeals, to be deducted from that portion of the residuary estate which is to be distributed under the said order.

Morrison, J.—I entirely agree with so much of the full and able judgment of the learned Chief Justice of this Court as applies to the power of the Legislature to pass the statute in question, and I concur in the remarks of the Chief Justice made in reference thereto; but, with the greatest respect, I cannot acquiesce in the conclusion that the learned Chief Justice has arrived at. I am of opinion after much consideration of the case; that the order of the Court below should be reserved, for the reasons about to be stated in the able judgment of my brother Gwynne, whose judgment I had an opportunity of reading and considering. I have only, in addition, to observe that, although we had much argument at the hearing upon the constitutional right of the Legislature to pass the statute under consideration, little or no notice was taken of what I think is the real matter in question—the rights of the infant appellants under the will of the testator, and the effect of the Statute upon those rights. It seems to me that to hold that the infant appellants are barred and deprived of their rights by virtue of the Statute—which in effect is the result of the order of the Court below—would be saying that which the Legislature has not said, and that which, in my opinion, the Legislature did not intend, and has not enacted or declared. In order to bar these infant appellants of their rights, and defeat the intention and object of the testator, the statute, in my opinion, should contain an express and explicit enactment to that effect, specifically referring to the appellants. I find no such provision or declaration in the Act; and I will further add that I think it is highly improbable that the Legislature had in their minds an intention to defeat the object and effect of the testator's will; and it is only reasonable to assume that if the Legislature proposed violently to interfere and deprive the grand children of their rights, it would have expressly declared such to be one of the objects and purposes of the Statute. Our Legislature in order to prevent any such injustice, by 31 Vic. cap. 1, sec 31, declared that no parties should be affected by the provisions of a private act such as this, unless therein mentioned or referred to; and if that section had been inserted in this act, it could not be argued that the rights of these infants were affected.

Galt, J. — I concur in the judgment of the Chief Justice, as well as in the remarks made and reasons given for his conclusion. I think the completion of the matter, after allotment, &c., should be made by the Referee, in order fully to relieve the trustees from all further trouble and responsibility.

Gwynne, J.— What has been contended on the part of the defendants in the above suit is, that the Legislature, in the exercise of what is