

substance. How can this notice to the maker, not to pay to the wife, neither addressed to the wife, nor communicated to her, and unknown to the endorsee at the time of the endorsement, be treated as a revocation of the authority to endorse? And it is to be observed that the case does not show any objection on the part of the plaintiff to an endorsee's right under the endorsement of the wife, nor to payment by the defendant to an endorsee, till this suit was brought. He gave the defendant notice that he should not pay to the wife; but said nothing against his paying to an endorsee; and did not then ask for payment to himself. And when the defendant, on the 13th of August, 1860, gave him notice that he was sued on the note by an endorsee and should pay to him unless he had an indemnity, the plaintiff gave no indemnity, did not come up to defend, and does not appear to have made any objection that payment should be made to the endorsee.

We think that the wife had authority to endorse the note; that there is nothing in the case tending to show that the authority was revoked before the endorsement; that the wife's endorsement transferred the note to the endorsee; and that consequently payment to him was payment of the note: and the conclusion is that the plaintiff had no case on which he could ask for a verdict, and of course the verdict for the defendant was right.

This makes it unnecessary to consider the other questions raised on the case.

Judgment on the verdict.

CLAREMONT BANK v. LUCY CLARK, TR.

In an action against several principal defendants, the fact that a woman summoned as trustee is the wife of one of these principal defendants is not of itself in this State sufficient to excuse her from making a disclosure, or from answering material questions as to her title to certain lands which were attached in the suit, and of which her husband was in possession at the time of the attachment.

THE action was against the White Mountains Railroad and others, as principal defendants, and Lucy Clark and others, as trustees.

Lucy Clark filed the usual plea, and the plaintiff elected to take her disclosure. Her disclosure was as follows:—

“Interrogatories proposed by A. F. Snow, Att’y for the plaintiffs, to said Lucy Clark, sued as trustee aforesaid:

Int. 1. Had you at the time of the service of the plaintiffs’ writ upon you, or have you at any time since had, any money, goods, chattels, rights or credits of the defendants, or any of them, in your hands or possession?

Ans. I am advised by my counsel that, being the wife of Morris

Clark, one of the defendants in this suit, I cannot be made liable as trustee; I therefore decline answering this or any other question, unless by order of the court.

Int. 2. Why, if at all, were deeds taken running to you of the lands in Whitefield, of which your husband, Morris Clark, was in possession at the time they were attached on the plaintiffs' writ? What was the consideration really paid for such conveyances? When, how and by whom was it paid?

Ans. I decline answering for the reason above stated."

The questions arising upon the disclosure were reserved.

Snow, for plaintiff.

Burke & Waitt, for Lucy Clark.

BARTLETT, J. By the statutes of this State a married woman may, under certain circumstances, make contracts, and with her husband even, which will be valid at law; *Albin v. Lord*, 39 N. H. 196; and in various cases may sue and be sued in her own name as if she were sole and unmarried; R. S. ch. 149, sec. 3; Laws 1846, ch. 327, sec. 4; Laws 1860, ch. 2342, sec. 3; *Jordan v. Cummings*, 143 N. H. 34; *Ames v. Foster*, 42 N. H. 382. The terms of these statutes are so broad as to allow, in certain instances, suits at law between husband and wife, and they are not coupled with any alternative clause like that in the statute of Maine, upon which the decision in *Smith v. Gorman*, 41 Me. 405, is placed by the court; and this natural construction of the language of these statutes is required by their general design. *Albin v. Lord*, 39 N. H. 203. In the present case, as Mrs. Clark may be liable as the trustee either of her husband or of others of the defendants, notwithstanding her coverture, the mere fact that she is the wife of one of the defendants is insufficient to excuse her from answering the first question.

The thirty-third section of ch. 208 of the Revised Statutes provides that "when real estate shall be attached on any such process, any person summoned as trustee in such process may be required to disclose the grounds of his claim, if any he have, to the same; and if it shall appear on the disclosure that it was conveyed to him to prevent its being seized on mesne process or execution against the principal debtor, or for the purpose of delaying or defrauding any creditor, or that he holds the same by a title apparently absolute, but which is in fact on any trust for such debtor or other person, judgment shall be rendered against such trustee for costs;" and we do not think that the simple fact that the trustee is the wife of the defendant, Morris Clark, is of itself a sufficient excuse for her not answering the second question; for her answer may be material both as respects her husband and his co-defendants—*Bell v. Kendrick*, 8 N. H. 522. Whether the provisions as to costs in the section cited apply to married women, and whether our present statutes have in any respect modified the general rule that made the wife of a debtor incompetent to testify for the plaintiff in an issue between

him and the trustee, (see *Coburn v. Mellen*, 19 N. H. 198,) are questions not now before us.

The trustee must be defaulted unless she obtain leave at the trial term to make a further disclosure.

EASTMAN v. MORRISON.

If a blank writ has been filled up with the names of the parties and a declaration inserted or annexed so as to be a complete writ ready for service, the same blank cannot be used again for a writ in another suit between different parties.

IN this case the defendant moved seasonably at the March Term, 1864, when the action was entered, that the writ be quashed upon the alleged ground that the blank upon which the writ was made had been previously used in the commencement of an action in favor of John S. Bryant against Isaac B. Smith, and had therefore performed its office; and the defendant offered to show by evidence *aliunde* that the writ so filled up against the said Smith had been put into the hands of an officer for service, and had been served by the attachment of his property; but the court rejected the evidence and the defendant excepted. The defendant then moved that the officer be required to make a return upon the writ which is on file, of the service upon said Smith, but this motion was reserved for the consideration of the whole court.

The defendant then contended that it was apparent on the face of the writ that the blank had previously been filled up and used to commence a suit against the said Smith as aforesaid; and it did appear upon inspection that such a writ was made and completed against the said Smith upon the same blank, and afterwards altered, but it did not appear whether the writ so made against Smith was delivered to an officer for service.

Bryant, for the plaintiff.

Westgate & Morse, for the defendant.

PERLEY, C. J. It appeared, on inspection of the writ, that a writ had been made and completed on the same blank in the action *John S. Bryant v. Isaac B. Smith*; but it did not appear that it had been delivered out for service in that action. After crasing what related to the action of *Bryant v. Smith*, the same blank was used to commence this suit. When a writ has been filled up and completed with the names of the parties to the suit and a declaration inserted or annexed according to our practice, we think the blank writ has done its office and cannot be used again to commence another action. This furnishes a plain and