
MERRIMACK.

BABBITT & a. v. MORRISON and Wife.

58a	419
66	143
68	620

Section 13 of c. 164, Gen. St., was an enabling, not a disabling, act. It enlarged the common-law rights of a married woman, but did not abridge her power to charge her separate estate with the payment of her husband's debts.

BILL IN EQUITY, to foreclose a mortgage made, June 1, 1875, by the defendants to the plaintiffs, to secure the payment of money loaned at the same time by the plaintiffs to Mr. Morrison, as to whom the bill was taken *pro confesso*. Mrs. Morrison answered, claiming that part of the land was hers, and that, as to that part, her coverture was a defence.

Pike & Blodgett, for the plaintiffs, cited *Crane v. Thurston*, 4 N. H. 418, 423; *Albin v. Lord*, 39 N. H. 196, 204; *Batchelder v. Sargent*, 47 N. H. 262, 265; *Stephen v. Beall*, 22 Wall. 329, 337, 338; *Faton v. Nason*, 47 Me. 134; *Maxon v. Scott*, 55 N. Y. 247; *Nash v. Spofford*, 10 Met. 192; *Willard v. Eastham*, 15 Gray 328, 335; *Bartlett v. Bartlett*, 4 Allen 440; *Heburn v. Warner*, 112 Mass. 271; *Thacher v. Churchill*, 118 Mass. 108; *Jones v. Crosthwaite*, 17 Iowa 393, 399; 2 Bl. Com. 292, n.; 2 Kent. Com. 167; 2 Story Eq., ss. 1,378-1,401 a; 1 Bishop Law of Married Women, c. 36; 2 id. c. 17.

Murray, for Mrs. Morrison.

DOE, C. J. The statute in force when the mortgage was made was an enabling, not a disabling, act. It enlarged the common-law rights of a married woman, but did not abridge her power to charge her separate estate with the payment of her husband's debts. The plaintiffs are entitled to judgment.

Case discharged.

FOSTER, J., did not sit.

ALLEN v. CHASE.

Section 33 of c. 1, Laws of 1868, does not give to a wife a homestead right in land not occupied by her husband, or herself, or any of his or her family, and on which none of them have a home.

DECLARATION (upon c. 2, Laws of 1877) of the grounds of the plaintiff's denial of the defendant's homestead right. Facts found by a referee. The land was formerly the homestead of the defendant's husband, owned by him, and occupied by them and their family. The defendant and her minor children left it Sept. 1, 1875. The plaintiff attached it Nov. 10, 1875, in a suit brought by him against the husband. Nov. 20, 1875, the husband conveyed it to E. In 1877, an officer, having the plaintiff's execution against the husband to be levied on the land, was requested by the defendant to cause a homestead to be set off. At that time the land was not occupied by the defendant, or her husband, or his or her family, and none of them had a home there.

Shirley, for the plaintiff.

W. T. & H. F. Norris, for the defendant.

DOE, C. J. The defendant is not entitled to a homestead. *Austin v. Stanley*, 46 N. H. 51; *Wiggin v. Buzzell*, 58 N. H. 329. In *Locke v. Rowell*, 47 N. H. 46, there had been an assignment to the plaintiff of a homestead, and her home continued to be there.

Judgment for the plaintiff.

FOSTER and ALLEN, JJ., did not sit.

GAGE v. DOW.

A state court has jurisdiction of an action brought by an assignee in bankruptcy to recover money paid by the bankrupt to the defendant in fraud of the bankrupt law.

ASSUMPSIT, by the assignee in bankruptcy of B. R. D., for money paid by the bankrupt to the defendant in fraud of the bankrupt law. Plea, to the jurisdiction. Question of jurisdiction reserved.

Barnard & Leach, for the plaintiff, cited *Goodrich v. Wilson*, 119 Mass. 429; *Eyster v. Gaff*, 91 U. S. 521; *Claflin v. Houseman*, 93 U. S. 130; *Wiswall v. Campbell*, 93 U. S. 347, 348, 349; *McHenry v. La Société*, 95 U. S. 58, 60; *Milner v. Meek*, 95 U. S. 252.

Mugridge and *H. S. Clark*, for the defendant.

DOE, C. J. The state court has jurisdiction.

Case discharged.

FOSTER, J., did not sit.