Segoord, Louis vs Garland, Anne P 1855 St. Louis Co. 365/4
Patterson, Henry
Pen, George

582/6

Leo
R&R

G wife of Garland, Hugh & owned land separate
Lucas, James & wife, Lucas Marie & Hunt, Anne conveyed to P&P
(1st to secure payment of six prom. notes
2nd to hold land for use of Anne Garland for use of her & her children

page 1

State of Missouri }
County of St. Louis } ss

Be it remembered that on the twenty seventh day of January in the year of our Lord One thousand Eight hundred and fifty five there was filed in the office of the Clerk of the St Louis Land Court a petition, which is in the words and figures as follows, to wit.

Petition

Louis Segond Plff

v

Anne P. Garland
Henry L. Patterson
& George Penn
Defts

In the Land Court
of
St Louis County
Missouri

The Plaintiff states that on the 31st day of August 1853 the defendant Ann P. Garland was a married woman the wife of Hugh A. Garland since deceased, and at the same time was and ever since has been and now is the owner of a separate estate subject to her own disposal being an estate for the life of the said Anne P. Garland in and to the following piece of real estate in the City of St. Louis, St Louis County Missouri, viz.

Beginning at a point in the Southern line of Olive Street in the City of St. Louis distant Westwardly 180 ½ feet from the North East Corner of Block 503, running thence Westwardly with said Southern line of Olive Street 20 feet three inches thence South-

wardly and parallel to 11th Street 109 feet one inch to alley; thence eastwardly with the north line of said alley six feet three inches thence northwardly at a right angle twenty feet 20 feet thence eastwardly at a right angle fourteen feet thence northwardly parallel to 11th St. 89 feet one inch to the place of the beginning.

That on the day of in the year one James H. Lucas and Marie C. Lucas his wife and Anne L. Hart conveyed to the said Henry S. Patterson and George Penn the aforesaid peice of property to have and to hold the same upon the following trusts. viz.

First to secure the payment of six promissory notes dated June 15. 1847, falling due respectively one in each of the following years viz. 1848. 1849. 1850. 1851. 1852. 1853, each of said notes being for dollars and cents with six per cent interest per annum after due till paid also one other promissory note of the said Hugh A Garland dated June 15. 1847. for 1246 dollars 12 cents falling due at the end of years from date with the like interest all of said notes being payable to

Second After the payment of the said notes then by the terms of said conveyance the said trustees Penn & Patterson were to hold the said property for the sole and separate use of said Anne P. Garland during her life and at her death then for the use of her Children,

page 3

A copy of the deed of the said James H Lucas & wife, to the said Patterson & Penn is herewith filed and made part of this petition.

That all the said notes ~~mentioned in the said notes~~ mentioned in the said deed of trust have been fully paid off and the said property released therefrom,

On the 31st day August 1853 said Hugh A. Garland executed and delivered his promissory note to the said Anne P. Garland and thereby promised to pay said Anne P. Garland or order one thousand dollars value received negotiable & payable at the Bank of the State of Missouri without defalcation and afterwards on the day and year last aforesaid the said Anne P. Garland endorsed the said promissory note and directed the contents of said note to be paid to the plff.

When the said note became due and payable viz on the 3rd day of March A.D. 1854. the said note was duly shown and presented for payment to the Teller of the Bank of the State of Missouri at the office of said Bank in the city of St Louis in the State of Missouri and the payment thereof was then and there refused of which the said Anne P. Garland and the said Hugh A. Garland then and there had notice.

The plff hereto annexes the said promissory note and makes the same a part of this petition.

The plff prays judgement against the said Anne P. Garland for the amount of the said note with

page 4

interest damages and costs of protest which costs is one dollar and sixty five cents and that the said interest of the said Anne P. Garland in the hands of the said defts Patterson and Penn may be sold to pay the said judgement or whatever amount may be found due to the plff in the premises and for such other judgement as may be proper in the premises.

Glover & Richardson
for the plff.

Nerée Vallé, as agent for plaintiff, makes oath and says that the above petition and the matters therein, as stated, are true to the best of his knowledge, and belief.

Nerée Vallé

Sworn to and subscribed before me, this 25th day of January 1855, as witness my hand and official Seal

seal

John Slecker,
Not. Pub.

Notary's fee, 25 Cts. pd. by N. Vallé.

A summons was then issued, in the words and figures following, to wit,

Summons

County of St Louis, ss
The State of Missouri

To the Sheriff of St Louis County, Greeting

We command you to summon Anne P. Garland, Henry L. Patterson & George Penn, to appear before the Judge of our Saint Louis Land Court, on the first day of the next term thereof, to be held in the city

page 5

of St Louis, within and for the County of St Louis on the First Monday of March next, then and there to answer the complaint of Louis Bryond as set forth in the annexed petition, and have you then and there this writ.

Witness, Charles A. Mantz, Clerk of our said Court with the seal thereof hereto affixed, at office, in the City of St Louis, this thirty first day of January in the year of our Lord eighteen hundred and fifty five.

Seal

Charles A. Mantz, Clerk

Upon which Summons, the Sheriff made the following return;

Sheriffs Return

Executed this writ in the County of St Louis on the 5th of February by delivering a copy of the writ and Petition (as furnished by the Clerk.) to Henry L. Patterson, and by delivering a copy of the writ to Anne. P. Garland & by delivering a copy of this writ to George Penn on the 14 day of February 1855.

Turner Maddox Sheff

By J. R. Jones Dep.

Fee $3.00

And afterwards the following Proceedings were had to wit

Thursday March 8th 1855.

page 6 | Louis Segond
vs
Anne P. Garland, Henry L Patterson and George Penn } Demurrer filed

Demurrer | Louis Segond
vs
Anne P. Garland et al } In the St Louis Land Court
March Term 1855

The said defendants demur to the plaintiffs petition for the following causes; To wit,

1st The petition declares upon a note indorsed by the Defendant Anne P. Garland whilst she was a feme covert, as appears on the face of said petition, and there are no special facts alleged in the petition fixing her liability as a married woman under the note here sued on.

2nd The petition does not allege any protest of said note for non payment, nor the giving of notice of protest thereof to the indorser,

3rd The petition does not state in what manner & by what proposition of law the plaintiff wishes to hold the defendants liable whether as indorser, or guarantor of said note, or as a party originally liable thereon,

4th Because no facts are stated in the petition which would warrant the court in rendering the judgement prayed for against the defendants Patte-

page 7 -ason & Penn,

5th Because the facts stated in the petition do not constitute a cause of action against either of the defendants,

6th Because the facts stated in the petition are not such as to give this court jurisdiction of the subject of the action

Whittelsey & Wickham
Attys p. d.

And afterwards the following further proceedings were had, to wit,

Saturday April 28th 1855,

Louis Segond
vs.
Demurrer Sustained — Anne P. Garland, Henry L. Patterson and George Penn } Now at this day come said parties by their attorneys, and submit to the Court, the demurrer hereinbefore filed by the defendants to the plaintiff's petition, and the Court being fully advised of and concerning the premises, doth order and adjudge that said demurrer be sustained, that the plaintiff take nothing by his said suit, but that defendants go hence without day, and recover of said plaintiff their costs and charges in this behalf expended, and have thereof execution

page 8

And afterwards the following further proceedings were had in this cause to wit:

Wednesday June 13th 1855

Louis Segond

vs

Anne P. Garland Henry L Patterson and George Penn

Appeal Granted

Now at this day comes the plaintiff by his attorney and applies to the Court for an appeal of this cause to the Supreme Court of this State, which appeal is granted, and thereupon bond in the sum of one hundred dollars with Nere Valle as Security is filed for said appeal.

Which Bond is in words an figures as follows, to wit;

Appeal Bond

Know all men by these Presents, That we Louis Segond, as principal and Nere Valle as Surety are held and firmly bound unto Anne P. Garland, Henry L. Patterson, & George Penn, in the sum of One hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our seals, and dated at St. Louis, this 13th. day of June, A. D, 1855.

The Condition of the above Obligation is such, that whereas Louis Segond has appealed from the judgement rendered against him and in favor of Anne P. Garland, Henry L. Patterson, & George Penn, in the St Louis Land Court, for the Costs together with costs.

page 9

Now, if the said Appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall perform such judgement as shall be given by the Supreme Court, and such as the Supreme Court may direct the St Louis Land Court to give; and shall, if the judgement or any thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this Obligation shall be void, otherwise it shall remain in full force and effect.

Pérée Vallé [Seal]

Saint Louis Land Court March Term, 1855.

Be it Remembered, that on this 15th day of June 1855 Perée Valle appeared as the security in the foregoing bond, and acknowledged that he executed the same for the purposes therein expressed.

In Witness Whereof I hereto set my hand and affix the seal of said Court at Office, in St Louis, the year last aforesaid

[Seal]

Charles A. Mantz, Clerk,

State of Missouri }
County of St Louis } ss

I Charles A. Mantz,
Clerk of the St Louis Land Court, within and for
said County Certify that the foregoing transcript
is a true and faithful copy of the Record and proce-
-edings had in the case of Louis Segond. plff. vs
N. P. Garland and others, dfts. as required. as the same
now remains of Record in my office

In testimony whereof I hereunto
set my hand and affix the seal of
our said Court. at Office in the
City of St Louis. this third day of
September. A. D. 1855

Charles A. Mantz. Clerk.

Index.

Petition	page	1. 2. 3. 4
Summons	"	4. 5.
Sheriffs Return	"	5. 6.
Demurrer	"	6. 7.
Demurrer Sustained	"	7. 8.
Appeal Applied for & Granted	"	8.
Appeal Bond		8. 9.

110

(6)

March. T. 1856

Louis Segond, Pff,
appellant

vs.

Anne P. Garland,
respondent

et. al.

Transcript for Supreme Court - from St. Louis Land Court -

Glover & Richardson for Pff
Whittelsey & Wickham for Defts

Filed 30th October 1855.
W. S. Planville
Cl.

Due for Transcript 2.75 paid by T. Gantt

110

Louis Segond
appellant
v.
Ann P. Garland et al
respondents.

In the Supreme Court: on appeal from the St Louis Land Court

The appellant comes and says that in the record of the proceedings of the St Louis Land Court in this cause there is manifest error in this, that upon the said record the judgment of the said Land Court should have been for the plaintiff, whereas it was given for the defendants, which is error for the following reasons, viz:

1°. That the petition showed a case wherein a married woman is chargeable on her contract, as a feme sole, in respect of her separate estate.

2°. That the petition shows a cause of action against the said Ann P. Garland, valid if she had been a feme sole at the time it accrued - and prays for judgment against, to be satisfied out of her separate property alone. All of which is conformable to law.

Wherefore the appellant prays that said judgment be reversed & the cause remanded.

Tho T. Gantt p.q.

Defendants join in error
Whittelsey
p. q

110.

Louis Segond, appt
v
Ann P. Garland & al
respondents.
assignment of errors
Gantt p.q.

Filed 26 March 1856
W. L. Glanville
Ck

On the case presented by the record the appellant makes the following points.

1º A married woman as to her separate property, a feme sole. and Equity will enforce out of her separate property the payment of all debts by her Contracted during Coverture.

Bell on the law of Property 513-519
(Vol 65. of Law Library. pp. 325-9).
Norton v Tonville 2. P. Will. 144
Halme v Tenant 1. Bro. Ch. Rep 14
17. Johns. 581
4 Paters al. Rep. 44. 208
5. J. J. Marsh. 230.

2d When a married woman having a separate estate does an act which wont be superfluous and nugatory unless it be Construed as a charge on her separate Estate, it shall be so Construed. ut res magis Valeat quam pereat.

2 P Williams 144
2 Ves. 193.
2 Atkins 69
3 Mylne & Keene 220
15 Ves. 599.
4 Russell 112
2 Roper on Husb & wife 246.
Clancy on Rights 346
2 Story's Equity 1400
10 Mo. 757
18 Cond. Eng. Ch. Rep 46
22 Wend. 528. Gardner v Gardner
3 Maddox 200.

These points.
~~His~~ Case, received a full discussion in a case already argued at the present term - and it is not intended to go over the same ground again.

Tho J Gantt for appellant

Louis Segond, appt.
v
Ann P. Garland
& al
Points & authorities for
appellant.
Gantt, for appt.

Filed 4 April 1856.
Wm J Glanville
Ck

2 C
5 C
16 00

Louis Segond
plaintiff & appellant
against
Ann P. Garland & al
Defendants & respondents

In this cause the petition shows that the said Ann P. Garland was in the month of August 1853 the wife of Hugh A. Garland since deceased. That she was the owner of a tract of land described in the petition to her sole & separate use. That on the 31st August 1853 H. A. Garland made to his wife a negotiable note for $1000 payable to her order: and that she endorsed the same to the plaintiff. That the note was presented to the said Garland at maturity & payment demanded, & refused, whereof due notice was given to the said Ann P. Garland. That the other defendants Patterson & Penn are trustees of said Ann P. Garland in respect of said separate use: and the petition closes with a prayer for ~~the sale of~~ judgment against the said Ann P. Garland, and a decree for the sale of her said separate Estate in the hands of Patterson & Penn for the satisfaction of the judgment.

To this petition the defendants demurred and for causes of demurrer showed.

1°. That the note declared on was made by a married woman & therefore void

2°. That the petition does not show a protest of the note

3°. Because the Land Court had no jurisdiction.

The Court below sustained the demurrer & the plaintiff appealed to this Court.

Gautt for appt.

110

Segond
v
Garland
Statement of the Case

Filed 4 April 1856.
Wm. S. Glanville
Clk.

Louis Degond
Appellant
vs
Ann P. Garland et al
Respondents
} No. 110
Supreme Court
March Term 1856.

Respondents adopt the Statement of facts in this cause made by the Appellant, except as to the causes for demurrer as set out in said Statement.

The first cause of demurrer is, that the note declared on was made by a Married Woman, and there are no special facts alleged in the petition fixing her liability as such under the same.

the other causes are correctly set out.

Whittlesey & Nicholas
for Respondents

11

Louis Segond

vs

Anne P. Garland et al

Respondents
Statement

Filed 8 April 1856
W. S. G Carville
Ck

Supreme Court
March Term 1856

Louis Segond
Appellant
vs
Anne P. Garland,
Henry L. Patterson &
George Penn
Respondents

Appeal from
St Louis Land
Court

The defendant Anne P. Garland wife of Hugh A Garland, had a trust estate in the lot in the petition mentioned, for the term of her own life, Patterson and Penn, being the trustees. The terms of the trust were, "for the sole and separate use of said Anne P. Garland during her life and at her death for the use of her children."

Having this separate estate, Anne P. Garland endorsed the negotiable promissory note of her husband Hugh A. Garland, which not being paid at maturity was duly protested for non payment, and of this she is alleged to have had notice.

Hugh A. Garland died before suit instituted.

The petition prays judgment against Anne Garland for the amount of the note, and that her interest and that of the defendants Patterson & Penn be sold to pay the amount due, and for such other judgment as may be proper.

The defendants demurred to the petition, because no cause of action was shown against Anne P. Garland, The plaintiff showed no right to the relief prayed, and because the court had no jurisdiction of the action.

1st The Land Court, had no jurisdiction of the cause of action. This is an action for money, and the fact that the plaintiff prays for a sale of land does not authorise a judgment for the money. Act 1853 p. 90. McCune v Dulle 20 Mo R. 596

That court has jurisdiction of actions upon contracts relating to land. But this does not relate to land, but to money, and that not the purchase money of land, but a debt of another character if a debt at all, even a debt upon a note.

The distinction seems plain. What is the subject of the action, money or land, if the former the court has not jurisdiction. For illustration can a party sue for the purchase money of land in the Land Court?

2d The plaintiff does not show any legal right to the relief he seeks. His petition prays for two things, a general judgment against the defendant Garland, and a sale of the trust estate to pay said judgment.

It is not necessary to cite authorities to show that the plaintiff is not entitled to this general judgment, because the wife is not liable upon any contract made by her while covert.

Is the plaintiff entitled to a sale of Mrs Garland's trust estate? Is he even entitled to stop the rents and profits until his debt be paid?

This brings up the question of the extent of the power of the wife over her separate estate, and whether with regard to it, she is to be considered as a feme sole simple or whether she possesses simply a power conferred upon her by the deed creating the trust.

As counsel for Mrs Garland, we assume the proposition of law, as stated by Chancellor Kent in the elaborate opinion in the case of Methodist Episcopal Church vs Jacques 3 John. Ch. R. 77, 113. that a feme covert, is not a feme sole to all intents and purposes as far as her separate property is concerned, but only to the extent of the power conferred by the settlement.

This decision of Kent is generally followed in most of the courts of this country, and most assuredly is

based upon the most solid reasoning, as is acknowledged even by the English court while deciding the contrary.

The principle is discussed at length in the notes to the case of Hulme v Tennant 1 Lead. Cas. Equity 389.

The American editor, very correctly says, that the courts generally in this country, hold the opposite doctrine from the English courts upon this subject, holding, that a married woman has no power over her separate estate, except where a provision for that a purpose is contained in the instrument creating the estate. 1. White & Tudor p. 405.

As the point has been so often and so ably examined in different states, I shall not cite nor examine all the authorities upon the subject but content myself with a reference to some few leading cases.

The decision of Chan. Kent was reversed upon appeal 17 John Rep. 548. 577. 582. the Court of Errors adopting the English rule, that the wifes power is absolute unless limited by the settlement. But the late decisions in that state have limited the rule, and they now hold that the wife's separate estate is not liable upon any general undertaking, but only for debts contracted for the benefit of the separate estate, or upon the credit of it, and that it rests upon the plaintiff to show that fact.

Curtis v Engel 2 Sand. Ch. R. 288. A general debt made by such feme covert having separate estate is not chargeable upon any implied undertaking of her. Id. North Am. Coal Co v Dyett 7 Paige 9. 14 affirmed 20 Wend R. 570.

The plaintiff therefor does not bring himself within the rule even as laid down by the New York Courts. No charge upon the separate estate is shown, nor was for it for the benefit of the separate estate, nor upon the credit of the estate for her benefit

The case of Coates v Robinson et al 10 Me. Rep. 357. is with

in the New York decisions. the debt was contracted for the benefit of the wifes separate estate.

In Pensylvania, the wife has only the powers conferred by the deed. Las

Lancaster v Dolan approving Kents doctrine 3 J.C.R. 108 and reviewing the authorities and the reason of the rule 1 Rawle Rep. 231). The principal was affirmed in Thomas v Folwell 2 Whart. 11. 16. and the bond of her husband and herself held not to bind her separate estate Dorrance v Scott 3 Whart. R. 315. She must have power to charge her separate estate Young v Ball 9 Watts Rep. 137).

The principle was also examined at length and declared. Doty v Michell 9 Smed. & Mar. R. 435. 447). declaring that she derived her power from the settlement and from it alone.

Montgomery v Agricultural Bank 10 Smed & Mar. R 565. 576.

The argument of Clayton, of counsel in case of Morgan v Elam 9 Serg R. 395. 391–398 classifies and shows the effect of the English authorities most ably, & the court adopted Kents sound logical rule. p. 4445. Sutton v Baldwin et al 8 Humph. R. 209.

But apart from authority, let us look at the reason of the thing.

At common law, the wife can make no valid binding contract. the husband represents the wife extra foris, and before the public her existence is merged in his. She may have any amount of property, as long as it is not settled to her separate use, she cannot bind it nor affect it by any contract. If land she may be barred by record, conveying by fine or recovery. She may join

her husband, however in any number of bonds, notes, and accepts bills of exchange, without exposing herself to any liability, for as to her the contract is absolutely void, and the law does not permit her to contract so as to bind herself by her acts.

If such be the law, can any sensible reason be given, why the fact, that property is settled to her separate use, shall in equity change this grand rule of law and make her liable to actions upon contracts that would be void at law, so that her void bond, or void acceptance, shall make her separate estate liable in equity. No good reason can be given, but that, which declares that womans existence shall be absolutely merged in that of her husband, and that all that she has shall be his, to gamble away, or use as he may see fit. If that be the policy of the law, however we may regret it, we must submit, but it would really seem as if sane people might be allowed to settle their property upon their friends, or daughters upon such terms as they may see fit, provided it be not tied up to the detriment of posterity or the coming man. (See Alex. Smith)

It follows consequently, that the possession of a separate estate does not make a feme covert in equity, liable upon any general liability assumed by her, That her bond or note is as void as ever before. If she has a power over her estate, it would seem, as if equity following the law, would hold that the power is declared and limited by the settlement, and that, following the principles of fair or strict construction all powers not granted expressly or by necessary implication are denied, or that is other words she may exercise only the granted powers. If by the instrument she may transfer by will, she may not convey by deed, for one power is granted, and the other is not granted. If she has the power of appointment, the exercise of that power must be shown by some act, that

should have no equivocal meaning, that should absolutely prove the intention and nothing else. This, at least, seems to be what reason demands, so that the act which at common law is void, shall not in equity bind the separate estate, because thereby declares the intention of the act when it has no knowledge of what was the real intention. The act which at law is void, in equity has an intention and is not void! Can this be so? If she possesses a power of appointment, reason and good sense require the fact of the exercise of the power, to be proven by some act that shall unequivocally show that intention.

In the case before us, nothing is shown to bring this case within the reason of any sound principle, even as laid down by the court of New York. The wife is not shown to have been dealing with her separate property, the credit was not given upon it, nor was the debt contracted for the benefit of her separate property. The liability was not direct but contingent, the husband being the primary debtor, and her liability depending upon demand, non-payment, protest and notice. There is no promise to pay out of the separate property, nothing that shows an intention to bind it, except the simple writing her name upon the back of the note. Nor does the petition even allege that she intended to bind her separate estate; it leaves that fact to be inferred from the fact of endorsement.

As the wife cannot bind herself at law, neither can she in equity, and she becomes a feme sole, so far as this, that she may accept and exercise a power as well for her own benefit as that of others, but the exercise of the power must be alleged and proved.

A. Whittelsey
Counsel for Def[illegible]

Louis A. Legond
Applant
vs
Anne P. Garland
Henry L. Patterson &
George Penn
Respondents

Brief of Respondents
Whittlesey
Counsel p. d.

Filed 9 April 1856
W. L. Hamilton
Clk

Louis Segond, Appellant
vs
Anne P. Garland et al.
Respondents.

No. 110
Supreme Court
March Term 1856

Brief for Respondents

The Court below committed no error in giving judgment for Respondents.

I Because it had no jurisdiction of the subject of the action.

The facts stated do not give jurisdiction of this cause to the Land Court, the contract upon which this action is founded, in no way relates to land in the County of St Louis, or to any right or interest in such land; Nor is there any claim set up to the title or possession of land in said County. The sole object of this suit is Money; or in other words to enforce the payment of a debt claimed to be due the Appellant. True the Court is asked to decree the sale of Respondents interest in certain real estate; but this is merely for the purpose of satisfying the debt sued for. to this extent all judgments rendered in any of our Courts of Record relate to land, & effect the title & possession of real estate, in as much as they operate as a lien upon it, & render it liable to sale. Moreover from any thing that is alleged in the petition, the Court might as well have been asked to decree the sale of personal property, of which none constat but that Respond-

may have had more than enough to satisfy all her debts.

II The facts as alleged in the petition, do not make a case wherein the respondents separate estate would be liable on the note here sued on.

(1) A feme covert has no power to charge, encumber, or dispose of her separate estate except such as is expressly given or reserved to her in the instrument creating the same; No such power is alleged to have been given respondent in this case, nor does any such appear in the deed of settlement; which indeed that instrument forms no part of the Record. This power must not only be Expressly given, but the mode prescribed for exercising it must be strictly pursued. This is the uniform course of the decisions in South Carolina

(A.D. 1811) Ewing vs Smith 3 Desaussure 417. 455
(A.D. 1840) Clark vs Makemia & wife Chews Eq: 163
(A.D. 1845) Reid vs Lamar 1. Strobhart Eq: 42

It is the settled law in Pennsylvania that instead of a feme covert with a separate estate having every power from which she is not negatively debarred in the instrument creating it, she shall be deemed to have none but what is positively given or reserved to her. Lancaster vs Dolan 1. Rawle 247.
Thomas vs Folwell 2 Wharton 16.
Rogers vs Smith 4 Barr Pa: R. 93. 98

Of the same complexion are the decissions in Virginia and in Tennessee

Williamson vs Beckham
8 Leigh 20. 27
Morgan vs Elam 4 Yerger 375
Marshal vs Stephens 8 Hump. 159
Cherry vs Clements 10 Sd: 852. 855

(2) The separate estate of a feme covert is only liable for, and can only be charged with such debts as were contracted for the benefit of the separate estate, or for her own benefit, upon the credit of the separate estate.

Plaintiffs petition does not allege that the debt sued for was created for the benefit of the separate estate, or for that of the Respondent; on the contrary the ~~the~~ facts as stated tend to preclude both of these propositions.

Gardner vs Gardner 7. Paige 112. 116
Cumming & Pollock vs Williamson 1. Sandford 17. 25
(See particularly p. 25) Curtis vs Engel. 2nd Sandford p. 288. 289
Lamoreux vs Van Rensselaer 1. Barbour 34. 37
Rogers vs Ludlow 3 Sandford 104.
Cater vs Everleigh 4 Dev: 19.

III No Intention on the part of Respondent to bind her separate estate by endorsing the note sued on, is alleged in plffs: petition; and although according to the decission in Coats et al: vs. Robinson & Hendly adm^r &c. 10 Mo: Rep. 760, the State of facts alleged, is prima facie evidence of such an intention, still the presumption is not absolute, and the intention should be al=leged, in order to give an opportunity of re=butting it by proof. By this endorsement the respondent is not primarily liable; and it is by no means self evident that she intended to make an appointment pro tanto out of her sepa=rate estate, when her being liable at all must depend on contingencies that might, or might not arise. When it is not the intention of a feme covert to contract a personal debt, or to charge a sum upon her separate estate the court can not raise an implied assumpsit to charge it.

Williams vs Duke of Bolton
2 Ves: 138

Aguilar vs Aguilar 5. Madd: 252
Jones vs Harris. 9. Ves: 497. 498

This seems to be the English rule, some of the American cases go still further; and require proof of an express agreement to charge the separate estate, otherwise it can not be made liable by implication

Cherry vs Clements
10. Humph: 555

The decission of our Supreme Court in Coats et al. vs Robinson & Hendly adm^r &c 10 Mo. Rep. 760., besides being a dissenting opinion, is but feebly supported by the authorities cited. It is in direct contravention of the South Carolina cases, with Ewing vs Smith at the head of them; and goes far beyond the rule laid down by the New York Cases. these seem to concede to a feme Covert, the right of disposing of her Saparate property absolutely jus disponendi, as incident to property of that nature; but they fall far short of giving her the full powers of a feme sole. Before liabilities created by a Married woman can operate as a charge upon her separate estate, it must be shown that the debts were contracted either for the benefit of such estate, or for her own benefit upon the credit of the Separate Estate. ~~Coats et al vs Robin~~

Curtis vs Engel 2 Sandford 288 & 89

The debt itself sued for in Coats vs Robinson is one which would come within the new York rule, as ~~being~~ chargeable upon the separate estate; being for part of the purchase money for the same. But the propositions of law as laid down by the court in that case, are by far too broad.

John Wickham
Of Counsel for Respdts:

No: 110

Louis Segond

vs Brief for Respdt.

Anne P. Garland et al

Filed 9 April 1856.
W. S. Glawiller
Cl.

No 110 - Oct. Term 1855

Segond against Garland

The question involved in this case we have settled at the present term in Whiteside's against Cannon and wife

In reference to the question of jurisdiction - the remedy sought is against the wife's real Estate - to subject it to the payment of the debt - and the case therefore is properly cognizable in the land court -

The judgement is reversed, with the concurrence of Judge Ryland and cause remanded for further proceedings -

A Leonard

Louis Segond

vs.

Ann P. Garland.

Opinion

Leonard.

Filed 15 Decr. 1856

Wm J Glanville Ch