No. 8531

Supreme Court of Illinois

Emerson

vs.

Clayton

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Pleas continued and held at the Court house in Carlyle within and for the County of Clinton in the second Judicial circuit of the State of Illinois before the Hon Silas L Bryan presiding Judge of Said Second Judicial ~~District~~ circuit, present Thomas S. Smith Clerk and Robert S. McDonne Sheriff of the term of august, to wit: on the 3d day of August in the year of our Lord one thousand Eight hundred and Sixty three

Emily H. Emerson
vs
James M Clayton } In Replevin

Be it remembered that heretofore to wit on the 22d day of December in the year of our Lord one thousand Eight hundred and Sixty two Emily H. Emerson by her attorney filed in the clerks office of said Court the following declaration to wit.

State of Illinois } ss. } Of the Clinton Circuit Court
Clinton County } March Term AD 1863.

James M. Clayton was summoned to answer Emily H. Emerson of a plea wherefore he took and detained the goods and chattels to wit; One large Gray mare of the value of Eighty Dollars and one Filley of the value of forty Dollars in all of the value of one hundred and twenty Dollars the property of the Said Emily H. Emerson by Ben Bond her attorney

[9531-1]

complains for that the said James M Clayton on the 26th day of March AD 1862 in the County of Clinton aforesaid took the goods and chattels to wit: one large Gray mare of the value of Eighty Dollars and one Filley of the value of forty Dollars in all of great value to wit: of the value of one hundred and twenty Dollars the property of her the said Emily H. Emerson. and unjustly detained the same against sureties and pledges until &c Wherefore the said Emily H. Emerson saith that she is injured and hath sustained damages to the amount of One hundred and fifty Dollars and therefore she brings her suit &c

Ben Bond
atty for pltff

and afterwards to wit on the 4th day of August AD 1863 the deft James M Clayton by Daniel White his attorney pleads Coverture of pltff as follows to wit:

State of Illinois } March Term of the Clinton
Clinton County } Circuit Court 1863.

Emily H. Emerson
vs } Plea of Coverture
James M Clayton

And the said James M. Clayton in his own proper person comes and defends the wrong and injury when and &c

and prays judgment of the said writ of the said plaintiff because he says that the said plaintiff because he says that the said plaintiff before and at the time of the commencement of this suit was and still is married to one Dan'l Emerson then, and yet is her husband who is still living to wit: at the County of Clinton and State of Illinois And that this he the said deft. is ready to verify wherefore he prays judgment &c

D. White
Atty for deft.

State of Illinois }
Clinton County } ss.

Defendant being duly sworn according to law deposes and says upon his oath that the plea hereunto before annexed is true in substance and in fact.

J. M. Clayton

Subscribed & Sworn
to before me this 4th
day of august 1863

T. S. Smith Clk

And afterwards to wit: on the 5th day of August AD 1863 the plaintiff by Ben Bond her atty filed her Replication to deft's plea of Coverture herein in the words and figures following, to wit:

State of Illinois } ss of the Clinton Circuit
Clinton County } Court august Term AD 1863.

Emily H Emerson }
vs } Replevin
James M Clayton }

and now comes the plaintiff by Ben Bond her attorney as to the plea of defendant above pleaded says precludi non because she says that the horses sued for were during her said Coverture acquired in good faith from other persons than her said husband with her own money and in her own right and as such she being a married woman under the Statute (~~an act~~ entitled an act to protect married women in their separate property approved February 21st 1861 and in force april 24th 1861) in such case made and provided remains her sole and separate property and under her sole control during her said Coverture and this she is ready to verify wherefore she prays Judgment &c

Ben Bond
Atty for plff

and afterwards to wit on the 6th day of August
A.D. 1863. the deft by D. White his attorney filed his demurrer to plaintiffs Replication in the words and figures following, to wit:

State of Illinois } Clinton Circuit Court
Clinton County } August Term A.D. 1863

James M. Clayton
ats } Replevin
Emily H. Emerson

And the said defendant as to the replication

of the Said plaintiff says that the Same is not Sufficient in law. wherefore he prays Judgment &c

D. White
Atty for Deft

And thereupon the court Sustained Said defendants demurrer to plaintiffs Replication aforesaid whereupon it is ordered by the Court. that defendant have judgment herein and that a writ of returno habendo issue &c

The State of Illinois
Clinton County } ss.

I hereby Certify that the foregoing is truly taken and copied from the records of the proceedings of the circuit Court within and for the said County of Clinton

In testimony whereof I do hereto Subscribe my name and affix the Seal of Said Court this 26th day of august AD 1863.

Thos S. Smith Clerk
of the circuit Court
of Said Clinton County

State of Illinois ss: The writ of error in this Cause will be no more a Supersedeas on the plaintiff in error executing a bond with Elisha Sharp security in the Sum of two hundred dollars conditioned according to law. Calyt Aug. 26. 1863 Sidney Breese

28531-5]

State of Illinois
Clinton County

Emily A Emerson

vs } On writ of Error to the
James M Clayton — Supreme Court

Elisha Sharp the security herein to the Bond in this Cause executed by Emily A. Emerson plaintiff being first duly sworn deposeth and saith that his property real and personal in the County of Clinton and state of Illinois owned possessed and enjoyed by him affiant at this time is worth and of the value of One thousand Dollars over and above all debts against and due and owing from him said affiant and over and above all Homestead and execution exemptions in his affiant's favor by and under virtue of the Statutes of Illinois in such cases made & provided & further affiant saith not

Sworn to & subscribed
before me this 26th day
of Augt 1863

John B Roper
Police Magistrate

Elisha Sharp

Know all men by these presents, that we Emily H Emerson and Elisha Sharp are held and bound unto James M Clayton in the penal sum of Two Hundred dollars, current money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our Heirs, Executors and Administrators, jointly, severally and firmly by these presents. Sealed with our seals and under our hands this 26th day of August 1863.

The Condition of the above obligation is such, That whereas the above named James M Clayton did on the 6th day of August A.D. 1863 before the Clinton Circuit Court in and for the State of Illinois, recover a judgment on demurrer to Replication of plaintiff therein filed against Emily H Emerson in an action of Replevin at the suit therein pending, on which judgment a writ of Retorno Habendo was by said Court awarded, from which said judgment so rendered as aforesaid the said Emily H Emerson has prosecuted her writ of Error to the Supreme Court for said State of Illinois. Now if the said Emily H Emerson shall well and truly prosecute her said writ of error with effect or shall pay whatever judgment and all costs and damages that may be awarded against her herein in case the Supreme Court shall affirm the said judg

[9531-G]

ment of the said Circuit Court therein and shall in all things abide by and perform the judgment and orders of the Supreme Court in the premises then this obligation to be void, otherwise to be and remain in full force and virtue in law and Equity.

E. H. Emerson (Seal)
Elisha Sharp

Emerson
vs
Clayton

Superseas bond.

Filed Aug. 31-1863.
N. Shelton Clk

In the Supreme Court of Illinois - November Term, 1863 - 1st Grand Division.

Emily H Emerson
vs } Error from Clinton
James M. Clayton

Page 1 This was an action of Replevin brought by Emily H Emerson a married woman in her own name pltff in error against James
2 M Clayton deft in error to recover one gray mare of the value of $80.00 and one Filley of
2 the value of $240.00.

The Declaration is in the usual form to which
2 Declaration defendant pleaded the Coverture
+3. of plaintiff in error which plea is copied in full in the Record herein submitted.

To which plea of Coverture as filed in said Cause by defendant below and defendant in error the pltff below and in error filed her replication which is as follows "and now comes the pltff by Ben Bond her attorney as to plea of deft above pleaded says precludi non because she says that the horses sued for were during her said Coverture acquired in good faith from other persons than her said husband with her own money and in her own right and as such she being a married woman under the statute entitled

[8531-1]

an act to protect married women in their
4 separate property approved February 21st 1861
and ~~in force~~ April 24th 1861 in such case
made and provided remain her sole and
separate property and under her sole control
during her said coverture and this she
is ready to verify wherefore she prays judgment
&c"

4 To which Replication the deft below and in
error filed his general demurrer which
was sustained by the court and judgment
entered accordingly and a writ of Return
Habendo was awarded.

Emily A Emerson brings the case to
this Court and assigns for error first
the judgment of the court on the demurrer
aforesaid is contrary to law. 2nd the
plea of coverture filed by defendant
is defective in form & substance.

Brief

In this case the statute changes
the common law rule which requires the husband
to be made a party along with the wife
The wife holds property acquired by her in
good faith, during coverture as her sole
and separate property, under her sole control to be
possessed and enjoyed by her the same as though
she was sole and unmarried &c. not to be sub

ject to the disposal, control or interference of her husband &c See Pub Laws Ills p. 143.
Hence she must have all the remedies known to the law to protect her in her rights as to such property or the statute will be rendered nugatory.

Ben. Bond Atty for Plff in Error

Emily H. Emerson
vs In Error
James M. Clayton

And now comes the said plaintiff by Ben Bond her attorney and sets down and assigns the following Causes of Error

1st the Court erred in rendering judgment for defendant on his demurrer to plaintiffs Replication herein to said defendant's plea of Coverture of Plff.

2nd The plea of Coverture filed by deft is defective in form and substance

3rd and for these and other Errors manifest in the Record the Cause ought to be reversed &c.

Ben. Bond
Atty for Plff in Error

Joinder in Error
D. White
Atty for deft. in Error.

[5531-2]

13

Emily H Emerson
vs
James M Clayton
to Sup Court -

Comm to Clinton

Filed August 31. 1863.
N. Johnston Clk

Paid by Brief - $11-00

At a Supreme Court, of the State of Illinois, begun and held at Mount Vernon, within and for the first Grand Division of said State, on Tuesday, the tenth day of November, in the year of our Lord one thousand eighthundred and sixty-three to wit: On Tuesday, the Seventeenth day of November, in the year of our Lord one thousand eighthundred and sixty-three.

Present, the Hon. P. H. Walker, Associate Justice.
" " Sidney Breese, " "

" Emily A. Emerson
" Pltff in error
" 13. vs
" James M. Clayton
" Deft in error

Error to Clinton

" On this day came again the
" said parties, and the Court having
" diligently examined and inspected,
" as well the record and proceedings aforesaid,
" as the matters and things therein assigned
" for error, and being now sufficiently
" advised of and concerning the premises,
" are of opinion, that in the record and
" proceedings aforesaid, and in the
" condition of the Judgment aforesaid,
" there is manifest error: Therefore it is
" considered by the Court, that for that

" ence and others in the record and proceeding
" aforesaid, the Judgment of the Circuit
" Court in this behalf rendered, be reversed,
" annulled, set aside, and wholly for nothing
" esteemed. And that this Cause be remanded
" to the Circuit Court for such other and
" further proceedings as to law and justice
" shall appertain. The whole with the
" costs against the said Defendants in error."

Opinion by

Rives. J.

" On the twenty-first day of February
" 1861 an Act was passed by the General
" Assembly of this State, entitled, "An Act
" to protect married women in their Sep-
" arate property", which provides. That
" all property, both real and personal,
" belonging to any married woman, as her
" sole and separate property, or which any
" woman hereafter married owns at the
" time of her marriage, or which any
" married woman, during coverture,
" acquires, in good faith, from any person
" other than her husband, by descent,
" devise or otherwise, together with all
" the rents, issues, increase and profits
" thereof, shall, notwithstanding her marriage,
" be and remain, during coverture, her

" sole and separate property, under her sole
" controll, and be held, owned, possessed
" and enjoyed by her the same as though
" she was sole and unmarried; and
" shall not be subject to the disposal,
" controll or interference of her husband,
" and shall be exempt from execution
" or attachment for the debts of her
" husband - See Laws 1861 page 140
" (it is 143).

" At the March term 1863 of
" the Clinton Circuit Court, the plaintiff
" in error filed her plaint in that Court
" in replevin for certain chattels, against
" the defendant in error, claiming the
" chattels as her own property. To this plaint
" the defendant pleaded in abatement
" the Coverture of the plaintiff, at the
" time of the commencement of the suit.
" To this plea, the plaintiff replied that
" the property sued for, was during her
" coverture acquired in good faith from
" persons other than her husband, with
" her own money and in her own right
" and as such remains her sole and
" separate property and under her sole
" controll, in virtue of the act of Feb. 21 - 1861.
" To this replication the defendant demur-
" red and the Court sustained the

" demurrer.

" The questions presented by these
" pleadings are important, and of the first
" impression in this Court, and we have fully
" considered them.

" Before the enactment of this
" law, there can be no doubt a feme covert
" could not sue alone for her own property,
" or institute any suit in her own name
" for the recovery of any of her rights. Indeed,
" she had no rights of personal property, all
" belonged, by the marriage to her husband
" which he might have reduced into his
" possession, and all was liable to become
" so subject. The common law did not
" recognize the condition of a sole trader in
" a feme covert, nor did it contemplate
" a case when a wife might hold property
" separate and apart from her husband.
" By it, the personal estate of the wife
" vested in the husband, and gave him
" absolute dominion over it. In the progress
" of civilization, an artificial state of
" society has grown up incompatible, to
" some extent, with that state of simplicity
" from which many rules of the common
" law have been derived and affecting
" in a serious degree, the artificial
" relations of society, and among them,

" that of husband and wife. In these days
" of excitement and speculation, by
" which fortunes are wrecked in a moment,
" and the innocent made to suffer from
" no misconduct of their own, it has been
" thought wise and expedient, by the
" legislature of this and other States,
" to protect the property of married
" women not only from such catastrophy,
" but to remove it entirely from the
" control of her husband, and making,
" as it regards such property, to all
" intents and purposes, a single woman.
" Such a change, in the relative rights
" and powers of husband and wife,
" must, of necessity, give a different
" operation to the rules of law by which
" they are to be governed. The right being
" vested in the wife, by the Statute,
" it must, if the act is to be enforced,
" remain intact until she consents
" to dispose of the property, for this
" right includes full domain over
" it. Her rights then, are the only rights
" affected, and on the well established
" principles of the law, she alone must
" bring suit for any invasion of them.
" By this Statute, a married woman
" must since its enactment, be consid-

"-and a feme sole in regard to her estate of
" every sort owned by her before marriage,
" or which she may acquire during cover-
"-ture in good faith from any person not
" her husband, by descent, devise or
" otherwise, together with all rents, issues,
" increases and profits thereof. And
" it is under her "sole control" and to
" her hold, owned possessed and enjoyed by
" her the same as though she was sole
" and unmarried, and it is not subject
" to the disposal control or interference of
" her husband, nor is it subject to
" execution or attachment for his debts.
" Language more plain and explicit
" than this could hardly be used to
" express the intention of the legislature.
" They designed to make and did make,
" a radical and thorough change
" in the condition of a feme covert.
" She is unmarried so far as her property
" is concerned, and can deal with it
" as she pleases. Having "the sole control"
" of it, there is no necessity of joining her
" husband in an action to recover it,
" or for trespass upon it. The very object
" of the statute, it would seem, was to keep
" it out of the control of her husband
" in any and every respect, that the wife

" should be wholly independent of him in
" regard to it. If this were not so, the act
" of itself would be futile and of no effect.
" The husband for purposes of his own,
" might refuse to join in an action with the
" wife. He might connive with others to dis-
" -possess her of her of her property. He might
" prefer that her property should pay his
" debts rather than his own should be
" seized for such purpose, and if so, it is
" not to be supposed, he would join in
" replevin or any other action to recover
" the possession. We are well satisfied
" the act can have no very beneficial op-
" -eration in favor of married woman, or be
" effective in the protection of her separate
" property, unless "the sole control" conferred
" upon her over it, is made to extend to
" the commencement and prosecution of suits
" for its recovery, even against her husband,
" should he, contrary to her wishes, and in
" contempt of her rights, unlawfully interfere
" with it. The right of "sole control" over
" the separate property of the wife by her,
" necessarily confers the power to do whatever
" is necessary to the effectual operation
" and maintainance of that right. These
" views are sustained by the Supreme Court
" of Pennsylvania, under a Statute similar

" in most respects to our own. Goodyear vs Ranbaugh
" & wife 13 Penn. 480- Cummings Appeal 11 ib 275.
" We see no other mode by which this Statute
" can be made effectual for the purposes
" contemplated by the legislature, than by
" holding the wife as to her separate property,
" to be in the condition of an unmarried
" woman, and capable of suing for its
" recovery in all courts-

" The judgment of
" the Circuit Court is reversed, and the
" cause remanded, with instructions to
" overrule the demurrer to the replication,
" and to permit the defendant to make
" up an issue thereon - if he desires
" to do so."

" Walker J. I concur in the decision
" of this case as announced in the forgoing
" opinion; but am not prepared to hold
" that the Statute could affect the title
" to property acquired before the passage
" of the law. As there is nothing in the
" record to show that it was not subse-
" -quently acquired I deem it unnec-
" -essary to discuss that question. It will
" be time enough to do so if it shall be
" presented by a rejoinder."

State of Illinois, S.S.

Supreme Court of said State.

First Grand Division.

I, Noah Johnston, Clerk of the Supreme Court, within and for the first Grand Division of said State, do hereby certify that the foregoing is a true copy of the final order, and of the opinion of the said Supreme Court, in the above and therein entitled cause, as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of said State, at Office in Mount Vernon, this twenty seventh day of August, in the year of our Lord one thousand eight hundred and sixty four.

Noah Johnston Clk

Emerson
vs
Clayton

1863

[8531-14]

In the Supreme Court, State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1863.

EMILY H. EMERSON,
vs.
JAMES M. CLAYTON. } Error to Clinton.

DEFENDANT'S BRIEF.

I. The replication of pl'ff. does not state *how* she acquired the property in question, whether by devise, descent or otherwise.

II. The statute does not change the common law so as to authorize a married woman to sue in her own name, without joining her husband, but only gives her additional rights and leaves her to enforce them in the same manner as she could those previously existing

III. This statute can be fully enforced by adhering to the common law rules in regard to who shall be made parties, and when this is the case the common law cannot be considered as repealed by implication. Where, by the custom of London, a married woman might sue as a *feme sole*, the courts held that her husband must join for conformity.—1st Chitty's Blk. Com. p 360, note 3.

IV. When the object of the Legislature can be as well attained by adhering to the rules of the common law in enforcing the rights by them granted to married women, the courts will certainly do so; and a statute will not be construed to repeal the existing law, unless the two are absolutely incompatible.—Bacon's Ab. title Statute.

BUXTON & WHITE, Att'ys for Def't.

Emily H. Emerson
vs
James M. Clayton

Defts Brief.

13

Filed Nov. 11. 1863
N. Johnston Clk

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In the Supreme Court of Illinois, November Term, 1863, First Grand Division.

Emily H. Emerson,
vs.
James M. Clayton.
} ERROR FROM CLINTON.

Page 1 This was action of Replevin brought by Emily H. Emerson, a married woman, in her own
2 name plaintiff, in error, against James M. Clayton, defendant, in error, to recover one gray mare of the value of $80 00, and one filley of the value of $40 00.

2 The declaration is in the usual form, to which declaration the defendant pleaded the
3 coverture of plaintiff herein.

To which plea of coverture, as filed in said cause by defendant below, and defendant in error, the plaintiff below and in error filed her replication which is as follows: "And now comes the plaintiff, by Ben Bond, her Attorney, and as to plea of defendant above pleaded, says *precludi non*, because she says that the horses sued for were, during her said coverture, acquired in good faith from other persons than her said husband, with her own money, and in her own right, and as such, she being a married woman, under the Statute entitled "An act to protect married women in their separate property," approved February 21st 1861, and in
4 force April 24th, 1861, in such case made and provided, remains her sole and separate property, and under her sole control during her said coverture, and this she is ready to verify, wherefore she prays judgment," &c.

4 To which replication the defendant below and in error filed his general Demurrer, which was sustained by the Court and judgment entered accordingly, and a writ of *retorno habendo* was awarded.

Emily H. Emerson brings the case to this Court, and assigns for error: First, the judgment of the Court on the demurrer aforesaid is contrary to law, &c. Second, the plea of coverture filed by defendant is defective in form and substance.

BRIEF.

In this case the Statute changes the Common Law rule, which requires the husband to be made a partyalong with the wife. The wife holds property acquired by her in good faith during coverture as her sole and separate property, under her sole control, to be possessed and enjoyed by her the same as though she was sole and unmarried, &c., not to be subject to the disposal, control, or interference of her husband, &c. See pub. laws Ill., 1861, p. 143. Hence she must have all the remedies known to the law to protect her in her rights as to such property, or the statute will be rendered nugatory.

It is a general and indisputable rule, that where there is a legal right, there is a legal remedy, by suit or action at law, whenever right is invaded. See 3 vol. Blk. Com., p. 23.

The Statute of 1861 is a remedial statute. Remedial statutes are those which are made to supply such defects, and abridge such superfluities in the Common Law, as may have been discovered. 1 Blk. Com. p. 87. 2 Bouv. Law Dic. 7, p. 546.

BEN BOND,
Attorney for plaintiff in error.

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Emerson
vs
Clayton

Abstract

Filed Nov. 9. 1863.
N. Johnston Clk

State of Illinois,
SUPREME COURT,
First Grand Division. } SS

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Clinton Greeting:

Because, *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Clinton *county, before the Judge thereof between*

Emily H. Emerson *plaintiff and*

James M. Clayton *defendant it is said manifest error hath intervened to the injury of the aforesaid* Emily H. Emerson *as we are informed by her complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at* **Mount Vernon,** *in the County of Jefferson, on the 1st Tuesday after the 2d Monday in November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* John D. Caton *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this thirty-first day of August in the year of our Lord one thousand eight hundred and Sixty-three.*

Noah Schuyler
Clerk of the Supreme Court.

[8-521-17]

13

SUPREME COURT.

First Grand Division.

E. H. Emerson

Plaintiff in Error,

VS.

J. M. Clayton

Defendant in Error.

WRIT OF ERROR.

Issued - made a Supersedeas and FILED August 31 - 1863 -

N. Johnston Cl

This writ of Error is made a Supersedeas, and to be charged accordingly. August 31. 1863.

N. Johnston Cl

In the Supreme Court of Illinois, November Term, 1863, First Grand Division.

Emily H. Emerson,
vs.
James M. Clayton. } ERROR FROM CLINTON.

Page 1 This was action of Replevin brought by Emily H. Emerson, a married woman, in her own
2 name plaintiff, in error, against James M. Clayton, defendant, in error, to recover one gray mare of the value of $80 00, and one filley of the value of $40 00.

2 The declaration is in the usual form, to which declaration the defendant pleaded the
3 coverture of plaintiff herein.

To which plea of coverture, as filed in said cause by defendant below, and defendant in error, the plaintiff below and in error filed her replication which is as follows: "And now comes the plaintiff, by Ben Bond, her Attorney, and as to plea of defendant above pleaded, says *precludi non*, because she says that the horses sued for were, during her said coverture, acquired in good faith from other persons than her said husband, with her own money, and in her own right, and as such, she being a married woman, under the Statute entitled "An act to protect married women in their separate property," approved February 21st 1861, and in
4 force April 24th, 1861, in such case made and provided, remains her sole and separate property, and under her sole control during her said coverture, and this she is ready to verify, wherefore she prays judgment," &c.

4 To which replication the defendant below and in error filed his general Demurrer, which was sustained by the Court and judgment entered accordingly, and a writ of *retorno habendo* was awarded.

Emily H. Emerson brings the case to this Court, and assigns for error: First, the judgment of the Court on the demurrer aforesaid is contrary to law, &c. Second, the plea of coverture filed by defendant is defective in form and substance.

BRIEF.

In this case the Statute changes the Common Law rule, which requires the husband to be made a partyalong with the wife. The wife holds property acquired by her in good faith during coverture as her sole and separate property, under her sole control, to be possessed and enjoyed by her the same as though she was sole and unmarried, &c., not to be subject to the disposal, control, or interference of her husband, &c. See pub. laws Ill., 1861, p. 143. Hence she must have all the remedies known to the law to protect her in her rights as to such property, or the statute will be rendered nugatory.

It is a general and indisputable rule, that where there is a legal right, there is a legal remedy, by suit or action at law, whenever right is invaded. See 3 vol. Blk. Com., p. 23.

The Statute of 1861 is a remedial statute. Remedial statutes are those which are made to supply such defects, and abridge such superfluities in the Common Law, as may have been discovered. 1 Blk. Com. p. 87. 2 Bouv. Law Dic. 7, p. 546.

BEN BOND,
Attorney for plaintiff in error.

13

Emerson
vs
Clayton

Abstract

Filed Nov. 9. 1863.
N. Johnston Clk

In the Supreme Court, State of Illinois,

FIRST GRAND DIVISION, AT MT. VERNON.

NOVEMBER TERM, A. D. 1863.

EMILY H. EMERSON,
vs. } Error to Clinton.
JAMES M. CLAYTON.

DEFENDANT'S BRIEF.

I. The replication of pl'ff. does not state *how* she acquired the property in question, whether by devise, descent or otherwise.

II. The statute does not change the common law so as to authorize a married woman to sue in her own name, without joining her husband, but only gives her additional rights and leaves her to enforce them in the same manner as she could those previously existing.

III. This statute can be fully enforced by adhering to the common law rules in regard to who shall be made parties, and when this is the case the common law cannot be considered as repealed by implication. Where, by the custom of London, a married woman might sue as a *feme sole*, the courts held that her husband must join for conformity.—1st Chitty's Blk. Com. p 360, note 3.

IV. When the object of the Legislature can be as well attained by adhering to the rules of the common law in enforcing the rights by them granted to married women, the courts will certainly do so; and a statute will not be construed to repeal the existing law, unless the two are absolutely incompatible.—Bacon's Ab. title Statute.

BUXTON & WHITE, Att'ys for Def't.

Emily H. Emerson
vs
James M. Clayton

Defts Brief

13

Filed Nov. 11 - 1863
A. Johnston Cl

Ottawa April 30

Dear Sir

The enclosed may be of some service to you and save you with the help of Mr. Colyer, some writing.

We are getting along here very well - great report of Beck with his speech - It has rained all the time since we came here with the exception of a few days.

Yrs very

Stoney Reece

[8531-20]

Carlyle May 24th 1864

Clerk of Supreme Court
Mt Vernon - Ills

Sir

I see in the case of Emerson vs Clayton, the judt of the Circuit Court was reversed & Case remanded - What are the amount of fees to be paid.

Yours &c
D. White

[8531-2]

OTTAWA
MAY
3
1864
ILL.

Major M. Johnston
Mt. Vernon
Illinois

Carlyle Illinois

August 27th 1863

Noah Johnston Esq
Clk Sup Ct

Dear Old Friend

Herewith I send you Copy of Record with order from Judge Breese for writ of Supersedeas. You will find the order for writ at the end or close of the record proper. Please return writ of Sup. to my address at an early day. I enclose Eleven dollars. — will have my Abs & Brief printed here. Mr Gustave Van Hoonbeke wishes me to call your attention to his case — his License I hope you will send soon as I want to employ him as an attorney in my office

By an early reply you will much oblige Yours truly

Ben. Bond

[8531-23]

13

Emerson
vs
Clayton

Praecipe

Filed Aug 31. 1863
A. Johnston Clk

Noah Johnston Esq
Attorney at
Mount Vernon
Ills

November Term - Supreme Court A.D. 1863.

13 — Emily H. Emerson. Pltff in error. vs. James M. Clayton. Deft in error — Error to Clinton — Reversed & Remanded

Pltffs Costs - Collected of her on her Bill. & by her Collected of Deft on Execution.

1863.	To filing Transcript 20 - Docketing Cause 12.	32.
	" Mot of Error - Mass a Supersedeas. & Stamp	1.50
	" Scire	1-00
	" filing Papers	50
	" Abstracts (500 words Each)	7-00
	" Entering Motion & Orders	1-00
	" " Opinion of Court (1500 words)	2.60.
	" Docket fee	6-00.
	" Cost Bill & Entering Same	.37
	" Ex. & C. & C. 50 - Postage 31	.83
		$ 21.12
	Clerk Clk. Thos. J. Smith - fee for Transcript - 1000 words & certificate	1 35
		22.47
	Certified Copy of Opinion & final order & Stamp	3 65
	Total —	$ 26.12

Due Pltff when collected -

Prepaid by Bond — 11-00

Abs. furnished - 1-00

$ 12.00

Defts Costs - filing Brief 43 -

Cost Bill & Ent Same 37 -

Tax Bill & C. & C. - 50.

Postage 6 - Stamps 5 - 11

$ 1.41

[8531-24]

Total Amt. of Pltffs Costs — 26.12
" " Defts Do 1 41

$27.53
1 11

$26.42

Less Do Costs D. White Atty
May 28-64 — in Answer
to his letter

13

Costs Taxed

Entered Docket Page 586

~~141 — 6~~

13 — 4

Emerson
vs
Clayton

Error to Clinton

Reversed and Remanded

1863

Reported
32 Ill

13 — 4

Emerson
vs
Clayton

Error to Clinton

1863

8531