

will and testament, in writing, or by any other writing whatsoever, signed with her hand, in the presence of two or more creditable witnesses."

There can be no doubt, that these provisions in the deed, freed the property and its proceeds, from the control of the husband, and from responsibility for his debts, *during the coverture*, and that the wife might at any time, during her life, in the way designated, have appointed the uses to which it should be applied after her death. She did not, however, exercise this power, and it follows, therefore, as I think, that upon her death the property remained precisely in the condition it would have been in, if no such power of appointment had been created; and the marital rights of the husband, being only suspended during the coverture, at once attach upon it.

In the case of *Steward vs. Steward*, 7 *Johns. Ch. Rep.*, 245-6, the Chancellor says, "I believe it has been the invariable practice, and that the uniform course of the precedents will show it, that when it is intended in a marriage settlement, to exclude the rights of the husband to the personal property of the wife, in the event of his surviving her, and in default of her appointment, an *express provision* to that effect is inserted in the deed"—and in the same case, the Chancellor also observed, "when the settlement makes no disposition of the property in the event of the wife's death, and provides only for her dominion over it during coverture, the right of the husband, as survivor is a fixed and stable right, over which the court has no control, and of which he cannot be divested.

The deed of settlement which was under examination in that case, was substantially, in many of its provisions, like the present, and the decree was in favor of the right of the husband; the wife having died without exercising the power of appointment.

In the case of *Ward et ux. vs. Thompson*, 6 *Gill & Johns.*, 349, the doctrine of the case of *Stewart vs. Stewart*, was fully confirmed, though the court made a decision adverse to the right of the husband, because by the deed he did not make a mere temporary surrender of his marital rights, but in the lan-