

guage of the Court of Appeals, "abandoned them forever." Upon examining the settlement in Ward and Thompson, it will be found, that the husband agreed that, all the property mentioned in it should "be under and subject to the exclusive, and entire management and control of the said Ann W. Menger, (the intended wife,) her *heirs, executors, administrators or assigns,*" "and the said Ann W. Mengers her *heirs, executors, administrators or assigns,* to receive and enjoy the rents, issues and profits thereof," without the interference in any manner of the said Robert Thompson" (the intended husband.) By the express terms, therefore, of that deed, there could be no doubt, that the husband not only meant to surrender his marital rights during the coverture, but that he intended to surrender them to the *heirs and representatives* of the wife, as well as to the wife herself. And it was upon this express ground, that the Court of Appeals based their decision against him, and in favor of her representatives.

It is true, there are in the deed now under consideration, some provisions, which do look to a continuance of the trust beyond the life of the wife; but these provisions have regard merely to the change of investments, and do not in any way alter the uses to which the investments shall be held. The words being, "that the new securities, &c. ; shall go and remain upon the same trusts and for the same intents and purposes, as the original stocks," &c. ;—and these original stocks, as we have seen, were, *during the coverture*, to be taken and made in the names of the trustees, or the survivor of them, and with all the estate of the wife, to be subject to her appointment by will, or deed, executed in the presence of two witnesses.

This provision in the deed is certainly not very intelligible, and not easily reconcilable with other portions of the instrument, and cannot, therefore, have the effect, of destroying that fixed and stable right of the husband, which Chancellor Kent says, can only be divested by an *express provision*.

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[No appeal was taken from this decision.]