

be taken of this deed, which seems to me to relieve it from any well-founded objection.

If with reference to the property contained in this deed, the marital right of the husband did not attach, and would not have attached even if it had not been executed, it follows necessarily that it can be no fraud upon that right.

A portion of the property conveyed by the deed of the 17th of April, 1843, to the complainant, had been conveyed by deed bearing date the 3d of January, 1825, by William Drake, the first husband of Catharine O'Neill, to one James Mowatt, in trust "for the sole and exclusive use and benefit of the said Catharine, wife of the said William Drake, her executors, administrators, and assigns, for ever, free, clear, and discharged from any control of her husband, and with full and complete power and authority to the said Catharine to convey, &c., the same by indenture and assignment under her hand and seal, or by her last will and testament."

It is absolutely certain, and has not been disputed, that by this settlement of William Drake for the use of his then wife, his own marital rights were extinguished, and that, with reference to the property thereby conveyed, she was to be regarded as a *feme sole*. But it is said that though the deed operated to suspend or destroy the rights of Drake, her then husband, it becomes inoperative after his death, and can have no influence upon the marital rights of a subsequent husband. If this shall turn out to be the legal effect of this deed, there is assuredly strong grounds for believing that it is an effect not within the contemplation of the party who made it, for can it with any degree of plausibility be contended, that William Drake, the maker of that deed, meant to settle property on his wife, free from his control, and yet subject it to the control and disposition of any person she might marry after his death?

Two cases are cited in support of the proposition, that the trust for the separate use of the wife was confined to the first marriage. They are reported in 6 *Simons*, 121 and 126; the first, the case of *Knight vs. Knight*, the other that of *Benson vs. Benson*, and it will be found, upon an examination of them,