

THE COUNTESS OF STRATHMORE *VERSUS* BOWES.

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Much has been written about the recent marriage of the Duke of York to Lady Elizabeth Bowes-Lyon, daughter of the Earl of Strathmore and Kinghorne, whose seat is Glamis Castle in Forfarshire, Scotland. The bride's family has had a long and remarkable history, stretching back into the dim and legendary past, and as Shakespeare has made Glamis Castle the scene of one of his greatest tragedies and has given to that tragedy the name of the thane of Glamis every element of romance attaches to the nuptials of a daughter of the house with the son of the King of England. Lawyers may, however, find a source of interest in the history of the family somewhat different from those which appeal to the general public.

There was a Countess of Strathmore living in the latter part of the eighteenth century who was left a widow with five children and in possession of large estates. She had little taste for widowhood and became engaged to a Mr. Grey, with whose consent she conveyed her property to trustees for her own sole and separate use notwithstanding any future coverture. On the eve of her wedding day she heard that a Lieutenant Stoney had fought a duel with the editor of a newspaper in which aspersions had been made upon her honour, that he had been mortally wounded and that he wished to see her before he died. She accordingly visited Stoney at his lodgings, where she found him apparently in great distress and nearing his end. In feeble accents he told her of the comfort it gave him to see her, and assured her that he would die happy if he could first be united with her in marriage. The Countess consented, and the next day married Stoney, who was borne to church in a litter.

The ceremony had a surprising effect upon Stoney's physical condition. He promptly got well, assumed the name of Bowes and began to take an exceedingly active interest in life. The Countess afterwards discovered that it was Stoney who had written the defamatory paragraphs in the newspaper, and that the supposed duel had never been fought. It was not long before Stoney, now Bowes, became aware of the settlement made by his wife of her property, and he began to treat her with great brutality. By means of threats and violence he induced her to sign a revocation of the trust deed, and when this was done he immediately began to cut down timber and raise money by charges upon various parts of the estate. After several years of virtual imprisonment, during which she was treated with every species of indignity, the Countess escaped and, suing for divorce, obtained a decree on the ground of cruelty and adultery. She then entered suit in chancery to set aside the deed of revocation, as having been obtained by duress. An issue being directed in the Common Pleas to try the fact, it was so found. Bowes then filed a cross bill to declare the original settlement a fraud upon his marital rights and to establish the deed of revocation.

At common law marriage gave the husband a freehold interest during the joint lives of himself and his wife in all estates of inheritance and life estates of which she was seised at the time of the marriage, or of which she became seised during the coverture. In the language of Lord Thurlow "the law conveys the marital rights to the husband because it charges him with all the burthens, which is the consideration he pays for them. Out of this right arises a rule of law, that the husband shall not be cheated, on account of his consideration."

It was held that there had been no fraud on Bowes. "It is impossible," said Lord Thurlow, "for a man, marrying in the manner Bowes did, to come into equity and talk of fraud." The Lord Chancellor, therefore,

affirmed the decree of Mr. Justice Buller, establishing the settlement and setting aside the deed of revocation. On appeal to the House of Lords, the Lord Chancellor's decree was affirmed, July 19, 1797. The case will be found reported in *Strathmore v. Bowes*, 1 Vesey jr. 22; 1 Rev. Rep. 75; 2 Bros. C. C. 345; 2 Cox 28; affirmed, 6 Brown's Cases in Parliament 427.

The principle at stake in this litigation has become obsolete in consequence of The Married Women's Property Acts, which have reversed the common law rule and enabled a married woman to hold, acquire and dispose of the legal as well as the equitable estate or interest in property of every kind in the same manner as if she were unmarried. It follows that a suit, such as *Bowes* brought, to set aside a settlement on the ground that it was a fraud upon marital rights is no longer possible, and the case of the *Countess of Strathmore v. Bowes* is only interesting historically as marking a certain stage in the development of the law of England, as illustrating the late survival in that law of the mediæval notion of the relative rights of *baron* and *feme*, the merger of the personality of the wife in that of her husband. "Husband and wife are one, and the husband is that one." Petruchio paraphrases (does he caricature?) this principle when he says (*The Taming of the Shrew*, Act III, scene 2):—

"I will be master of what is mine own;
She is my goods, my chattels; she is my house,
My household stuff, my field, my barn,
My horse, my ox, my ass, my anything."

