

The proposition then is, that though the real estate of the wife may not be liable for the husband's debts during the life of the wife, if for any purpose it becomes necessary to convert that real estate, the protection of the law is withdrawn, and the creditors of the husband, so far as his interest is concerned, may seize upon it. If this be so, it would follow in many cases that the law which was intended to shield the real estate of the wife during her life from the claims of the husband's creditors, would be illusory and ineffectual, as it frequently happens that a sale for the purpose of partition is absolutely necessary, and may be enforced against the consent of the wife, or her interest may be converted into money by proceedings under the act to direct descents whether she consent thereto or not.

In this case the wife is still living, and, therefore, if there had been no sale, the creditors of the husband could not now resort to his interest in her land to pay their claims against him, and as the money, the proceeds of the land, must be regarded as standing in the place of the land, it appears to me, the act of Assembly extends to and protects it.

I cannot bring myself to think, that the legislature intended to restrict the humane provision of the law as has been urged by the counsel for the petitioner. The land of the wife may not only be sold without her consent, when other parties are interested in it as co-heirs, but it is frequently indispensable to the profitable enjoyment of the property that it should be sold, and to say, that in either case, the husband's creditors may at once, and in her life, lay their hands upon the proceeds, or any part of the proceeds, would be to frustrate the plainly indicated policy of the law.

Upon these grounds, then, and without expressing any opinion upon the other questions discussed at the bar, I shall refuse the application of the petitioner, and dismiss his petition, but without costs, as his conduct in bringing the question before the court was judicious and proper.

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H. W. WEBSTER, for Petitioner.

OTHO SCOTT, for Respondent.