

THE MARRIED WOMAN'S PROPERTY ACT OF 1884.

contracts, nor could it be conveyed by her except with the concurrence, and by the assistance of her husband. With respect to her personal property acquired after the passing of that Act, or not then reduced into the possession of her husband, notwithstanding it was a long time questioned whether she had the right to bind it by her contracts, or in other words, whether it was her separate property, possessing all the incidents of separate property, including the power of alienation, it was finally held in the Court of Appeal in *Lawson v. Laidlaw*, 3 App. R. 77, Patterson, J.A., delivering the judgment of the Court, that such personal property was her separate estate, and would be bound by her contracts.

A great advance was made, however, in the emancipation of married women so far as their real estate was concerned, by 35 Vict. cap. 16, generally known as the Married Woman's Act of 1872, and afterwards consolidated in Revised Statutes of Ontario cap. 125. It may be pointed out, however, that the Revised Statute is not a precise consolidation of 32 Vict. cap. 16, as the effect of section 1 of this Act was changed by Sched. A. (156) 40 Vict. cap. 7, by which latter Act the Act of 1872 is confined to the case of marriages taking place after the 2nd March, 1872, while by 35 Vict. cap. 16, section 1, the Act would seem to have embraced the case of a woman married before the passing of the Act, but acquiring real estate after that date. The judgment of Vice-Chancellor Blake, in *Adams v. Loomis*, 22 Grant, 99, proceeds upon the ground that the Act of 1872 enabled a married woman, no matter when married, to deal with, bind by contract and convey real estate acquired after the 2nd March, 1872. See also the remarks of the late Chief Justice Spragge, then Chancellor, upon the same subject, in the case of *Griffin v. Pattison et ux.*, 45 U. C. Q. B., 536. The

effect of this latter Act, confining it entirely to cases arising under Revised Statutes of Ontario cap. 125, is that women married after the 2nd day of March, 1872, have complete control over, and full power to bind by their contracts, as well as to convey, their real estate, nor are their husbands necessary parties to such conveyances notwithstanding the very general language of Revised Statutes of Ontario cap. 127. See *Boustead v. Whitmore*, 22 Grant, 222, and *Bryson et al v. Ontario and Quebec Railway Co.* 8 O. R., 380; though as to the effect of this Act upon the husband's right as tenant by curtesy, see *Furness v. Mitchell*, 3 App. R. 510.

However, as to the contracts of married women under the Act of 1872, such contracts only bound such separate estate as she possessed at the time of her making such contract, and which was still in esse at the time the contract was sought to be enforced. See *Lawson v. Laidlaw*, 3 App. R. 77, and *Pike v. Fitzgibbon*, 17 Chy. Div. 454, nor would an injunction be granted to restrain a married woman from parting or dealing with her separate estate, while her contract was still in esse, and no judgment had been entered in the suit to enforce such contract.

It is difficult as yet to determine how far a married woman's liability and her capacity to contract and to sue and to be sued, have been increased by the Married Woman's Property Act of 1884, which, as has been before stated, is in many respects similar to the Married Woman's Act of 1882, of the Imperial Legislature. Some decisions, however, have been given both here and in England, which to a certain extent will be of assistance, in enabling us to arrive at a proper construction of the Act in question.

It has been decided in the case of *Re Shakespeare, Deakin v. Lakin*, 30 Chan. Div. 169, that if a married woman having no separate estate enters into a con-