

provisions of the act, taken together, and of the Consol. Stat. U. C. ch. 85, that she cannot convey her land except by a deed executed jointly with her husband, and acknowledged in accordance with the terms of the last-mentioned act.

The statute 22 Vic. ch. 34, sec. 14, as originally framed, might imply a power to contract debts on the part of a wife after marriage, for which she would be liable, in the event of no ante-nuptial settlement, to the extent and value of her separate property, in the same manner as if she were sole and unmarried. But by the Consolidated Act, ch. 73, sec. 14, the word "hereafter" is omitted after the word contract and before the word made, so that the section now reads, "Every married woman having separate property, whether real or personal, not settled by any ante-nuptial contract, shall be liable upon any separate contract made or debt incurred by her before marriage (such marriage being since the 4th May, 1859), or after this act takes effect, to the extent and value of such separate property, in the same manner as if she were sole and unmarried."

The object of this section as it now stands, taken in connection with sec. 18, seems to be to make the property of the wife liable for debts contracted by her before marriage, and to relieve the husband from the common law liability which he would incur by the marriage to pay his wife's debts; and sec. 15, makes him liable for her debts before marriage to the extent or value only of the interest he may take in her separate property on a contract or settlement of marriage.

Sec. 18, refers to proceedings at law or in equity by or against a married woman upon any contract made or debt incurred by her before marriage, and enacts that her husband shall be made a party if residing within the province, but if absent therefrom, the action or proceeding may go on for or against her alone; and in the declaration, bill, or statement of the cause of action, it shall be alleged that such cause of action accrued before marriage, and also that such married woman has separate estate; and the judgment or decree therein, if against such married woman, shall be to recover of her separate estate only. The remainder of the section refers to the effect of the husband pleading a false plea.

Surely, if the legislature contemplated an action or proceeding against the married woman on any contract made or debt incurred by her after marriage, provision would have been made for it. The absence of such provision seems a strong argument in favor of the view that no such liability could arise. The third section makes the separate property peculiarly liable on an execution against her husband for her torts.

The cases decided under the statute seem to me to dispose of the question raised under this demurrer.

In *Kraemer v. Gless*, 10 U. C. C. P. 470, it was held that the statute did not enable a *feme covert* to bind herself as a *feme covert* to a greater extent than she could do before the passing of the act.

The 13th section of the act declares, that any estate which the husband may by virtue of his marriage be entitled to in the real property of his wife, shall not during her life be subject to the

debts of the husband. This the court, in *Emrick et ux. v. Sullivan*, 25 U. C. Q. B. 105, seemed to think implied that the estate which the husband had by the marriage in his wife's realty was, being jointly seised with her during the coverture in her right in her real estate, and then he would be a necessary party to the conveyance of such an estate, and at common law he alone could lease for a term. If the husband has an interest in the wife's real property by virtue of the marriage, I do not see how she can by her own individual act, without his consent, affect that interest so as to render that property liable to be sold under an execution at law, which would be the effect if this action can be maintained.

*Scouler v. Scouler*, 19 U. C. Q. B. 106, decides that under the statute a married woman cannot sue alone to recover possession of real estate acquired by her before the coverture, when she married since 1859.

The very able judgment of Vice-Chancellor Spragge in *Royal Canadian Bank v. Mitchell*, 14 Grant, 412, takes up the doctrine of equity as to the separate estate of a married woman being liable for her debts, and shews how it is acted on in England and under the general rule in equity which prevails. He sums that branch of his argument up as follows: "The principle of the decisions is, that a married woman entering into a contract, having separate estate, and having as incident to it a right to dispose of it, and being *not personally liable* upon her contract, is presumed to contract with reference to her separate estate, and to intend to charge it. But such presumption cannot arise where she cannot charge her real estate; where, even if she had done so in express terms, it would have been unavailing. It would infringe the maxim that a person cannot do indirectly that which he cannot do directly."

The learned Vice-Chancellor further observes, "The general scope and tenor of the act is to protect and free from liability the property, real and personal, of married women; not to subject it to fresh liabilities, except in the case of her torts and of her debts and contracts before marriage. The change made in the 14th section applies with peculiar force to the case before me. It is an unmistakable manifestation of intention that the separate estate of married women shall be liable only upon debts incurred or contracts made before marriage."

In *Chamberlain v. McDonald*, in the same volume of the Upper Canada Chancery Reports, at page 448, the learned Chancellor of Upper Canada declared that he agreed with the judgment of Vice-Chancellor Spragge in the view he took of the Married Women's Act in *Royal Canadian Bank v. Mitchell*. Vice-Chancellor Mowat suggested that as to personal property, the wife might have a power of disposing of it independent of her husband, but as to real estate he thought there was more reason for denying it.

The case of *Hall v. Waterhouse*, before Vice-Chancellor Stuart, 24th April, 1865, reported in 12 L. T. Rep., N. S., 297, and *Taylor v. Meads*, before Lord Chancellor Westbury, 11th February, 1865, reported in the same volume at p. 6, with the exhaustive judgment of Lord Justice Turner, on the 15th March, 1861, in the case of *Johnson v. Gallagher*, reported in 4 L. T. Rep. 75,