

ENFORCEMENT OF MARRIED WOMAN'S CONTRACT REGARDING HER RIGHT TO DOWER.

The Vice-Chancellor distinguished the case from *Van Norman v. Beaupré*, 5 Gr. 599, where the husband alone had made the agreement, and it was held, that if he could not procure his wife to join in the conveyance, he would have to suffer an abatement of the purchase money. This was indeed clearly laid down by Esten, V. C., in an earlier case of *Kendrew v. Shewan*, 4 Gr. 578, where it was held (as stated in the head note) if a party agrees to convey property he is bound to do so free from dower; or if the wife will not release her dower, then to convey subject thereto, with abatement of the purchase money.

But the question of the wife's competency to contract was that which seems to have been overlooked in the case of *Loughhead v. Stubbs*. *Castle v. Wilkinson*, L. R. 5, Ch. 534, is much more in point than any of the cases cited in the report. There a husband and wife had agreed to sell the wife's estate. She refused to convey, and the purchaser filed his bill asking that the husband should convey and accept a reduced price. But this was refused and Lord Hatherley said, "on the face of the agreement the husband and wife intended to sell and the purchaser knew that he was contracting with them for the estate of the wife, and that he could only get what the wife was willing to convey." So in the case we are considering, the purchaser and the husband knew that the right to dower could be transferred only if the wife was willing to join in the conveyance. Could the Court, even if she were joined as a defendant, compel her to execute the conveyance? As the case stands it would suggest an affirmative answer.

No reference is made to the statutory law relating to married women, and it is impossible to say how far the attention of the Judge was directed to this aspect of the case. If the wife of the defendant was still under common law disabilities, it is clear that she could not bind herself

by signing the agreement to convey her interest, and that specific performance could not be enforced against her. This is the law even if a married woman acts as a trustee in making the contract: *Avery v. Griffin*, L. R. 6 Eq. 606 (where she was a devisee in trust to sell the property).

But if the defendant's wife was within the scope of the enabling statutes then her inchoate right of dower can not be regarded as her separate estate nor was it such an estate or interest in possession as was contemplated by the Married Woman's Property Act of 1872. Upon these points the case in appeal of the *Standard Bank v. Boulton*, 3 App. R. 93, demands an attentive consideration. See also *Britton v. Knight*, 29 C. P. 567.

It may be argued, that since the Revised Statutes a different interpretation would be given to the clause of that Act which was under discussion and was there adjudicated upon by the Court of Appeal. For this reason, that whereas in the original Act the words "any married woman shall be liable on any contract made by her respecting her real estate, as if she were a *feme sole*," formed the concluding clause of the first section, the whole of which was in the form of a single sentence—these words are now isolated and appear in an independent section in Rev. Stat., cap. 125, sec. 19, p. 1167. The Chief Justice was evidently influenced by the collocation of the clause and thought that the expression "real estate" should receive the same construction (*i. e.* as meaning *separate* real estate) throughout the section. But having regard to 40 Vict., c. 6, s. 10 (Ont.), it is likely that no different holding would result from the severance of the clause from its former context.

The later English authorities indicate a growing disposition to extend the liabilities of married women, and no doubt