

## RECENT DECISIONS UNDER THE MARRIED WOMEN'S PROPERTY ACT.

was sufficient to answer the demand, it is enough, apparently, to prove that she had some separate property, no matter how insignificant it may have been in amount. The result of the case is, that if it can be shown that at the time a married woman enters into a contract she had a dollar of separate property, the contract may be enforced against her to the extent of any separate property she may subsequently acquire during her coverture; but if it cannot be proved that she had the dollar, then the contract is invalid and cannot be enforced, though she may subsequently during her coverture have acquired ample separate property to answer the demand. No one can reasonably suppose that the Legislature intended any such absurd result. Then the Act provides that "every contract entered into by a married woman with respect to, and to bind her separate property, shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire." Here again the process of judicial construction has materially limited the operation of the Act. Seizing on the words "separate property," the court has held that that species of property can only be acquired during coverture, and therefore if a married woman having made a contract subsequently becomes a widow, and during her widowhood acquires property, that property is not "separate" property, and is therefore not liable to answer a debt contracted by her during coverture. Here again we cannot help thinking the intention of the Legislature has been frustrated. Any such limitation as the court has discovered in the language used, could hardly have been contemplated by the framers of the Act. This section was no doubt framed to meet the case of *Pike v. Fitzgibbon*, 17 Chy. D. 454, which determined that a married woman, in the then state

of the law, could not by her engagements bind anything but her separate estate, to which she was entitled without restraint on anticipation at the time when the engagement was entered into. And that any engagement entered into by her was a nullity as respects any separate estate she might afterwards acquire, or which when she entered into the engagement she held subject to a restraint on anticipation, although the restraint on anticipation were subsequently removed by the death of her husband.

It is clear, therefore, that if *Beckett v. Tasker* and *Palliser v. Gurney* are rightly decided, that the attempt to get rid of the effect of *Pike v. Fitzgibbon* has been only successful to a very limited degree. It is still necessary to establish affirmatively the possession of separate property by a married woman at the date of any contract she may make, and although it is not now necessary to go on and prove that she is still, at the time of the trial, possessed of that same property, it would seem to be still necessary to go on and prove that at the date of the trial she has some separate property. Furthermore, though separate property acquired by a married woman subsequently to her contract is made liable to the creditor, yet property acquired by her after the coverture has ceased is, as we have seen, declared to be exempt from liability for her contracts made during her coverture.

There is yet another recent case to which attention may be directed, which, though of no direct importance in this Province, is nevertheless illustrative of the disposition of the courts to restrict the operation of the Acts attempting to emancipate the property of married women from marital control.

The case we refer to is *Re Smith, Clements v. Ward*, 35 Chy. D. 589, 56 L. T. N. S. 850. There a testatrix who was married before the Married Women's