

MARRIED WOMAN'S PROPERTY ACT.

liability in respect of her contracts as a man.

It is no doubt to property of some kind or other that a judgment creditor of a married woman must look for the satisfaction of his judgment; the personal remedy in general amounts to nothing, but the effect of limiting the liability to her property has been found by past experience to put difficulties in the way of recovering judgment against a married woman on her contracts, which we much doubt whether the present Act has removed. The contract being proved, there ought to be no technical difficulty in the way of recovering judgment upon it; the question, as to whether or not the married woman has any property out of which it can be satisfied, is a matter that ought not to affect the right to judgment. The creditor should be allowed to enter his judgment and should be left to resort, from time to time as the occasion might present itself, to such property of his debtor, as he might discover, liable to satisfy his debt. The courts in the past, however, have held that, owing to the property only, and not the person, of a married woman, being liable for her contracts, the creditor before he can get judgment must allege, and if denied, must prove that the debtor actually has separate property liable to satisfy the debt before he can get judgment. We fear the same difficulty may still be found to exist in recovering judgment under the new Act, notwithstanding property acquired subsequent to the contract is now made liable.

In the eleventh section, which is adapted from the twelfth section of the English Act, we experience the inconvenience which sometimes result from the divided jurisdiction of the Provincial and Dominion Parliaments. The English Act in the twelfth section provides for the remedies, by way of criminal proceedings, which a wife may have for the protection of her

property; but, owing to the Provincial Legislature not having jurisdiction in criminal matters, this part of the section is perforce omitted from the Ontario Act.

In the twelfth section of the Ontario Act we observe that a variance occurs between it and the thirteenth section of the English Act from which it is taken. The proviso at the end of the section that nothing in the Act shall operate to increase or diminish the liability of any woman married before the commencement of the Act for any debt, contract or wrong is in the English Act followed by the words "except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Act hereby repealed or otherwise if this Act had not passed"; but these words are, for some reason which we do not at present understand, omitted from the Ontario Act; and yet, it will be observed, the Act may very materially increase the right of married women to property. The Act repealed (R. S. O. ch. 125) was, as to women married on, or before, or since, 4th May, 1859, confined as regards personality to those married without a marriage settlement, and also as regards realty in the case of those married prior to 2nd March, 1872, to those who married without a settlement: in other words whenever there was a marriage settlement the Act gave no separate right of property to these two classes of married women. The Act of last session, however, practically removes this restriction, and gives all women, no matter when married, and whether with, or without, a settlement, right to property acquired subsequently to the passing of the Act; so that the omission of the exception in question from the end of the twelfth section appears to be a grave mistake.

The somewhat debated point as to whether, under the former Act, a married