MARRIED WOMEN.

In the case of *Re March Mander* v. *Harris* 51 L. T. N. S. 380, the English Court of Appeal reversed the decision of Chitty, J. (24 Ch. D. 222). The case involved the effect of the Married Women's Property Act, 1882, upon the construction of a will, whereby the testator devised to a man and his wife and a third person certain property. Chitty, J. had determined that the effect of the Married Women's Property Act, 1882, was to work an abrogation of the ancient rule of construction, whereby the husband and wife were regarded in law as but one person, and would, therefore, take a moiety, the third person taking the other moiety; and that now by virtue of the Married Women's Property Act, 1882, the parties severally take under such a devise one-third each. The Court of Appeal however held that the will, having been made in 1880, was not affected by the Married Women's Property Act, 1882, subsequently passed, notwithstanding that the testator did not die until 1883, after that Act came into operation. The Court of Appeal, however, was careful to guard itself against being in any way committed to any opinion as to what would be the judgment of the Court in such a case if the will were made after the Married Women's Property Act, 1882, took effect. This case follows in principle *Jones* v. *Ogle* L. R. 8 Chy. 192, in which it was laid down that the construction of a will is not affected by a statute passed subsequent to its date, even though the testator may not die until after the statute takes effect. But in neither *Jones* v. *Ogle*, nor yet in *Re March*, does the Court appear to have considered how far such a ruling is consistent with the 24th section of the Wills' Act (see R. S. O. c. 106 s. 26), which expressly declares that every will shall be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. It might be argued that the testator must be presumed to make his will with reference to the state of the law at the time the will bears date; but on the other hand it may be said that a testator is to be presumed to know the law, and if any Act is passed affecting the construction of a will previously made by him, and he does not choose to alter it, he should be presumed to have adopted the alteration in its construction effected by any subsequently passed statute. At all events we think this exception which the Court of Appeal appears to have engrafted on the 24th section of the Wills Act should at least have been justified by some reference to the latter Act, which, however, is not referred to in either case either by Court or counsel. Possibly the question may to some extent be affected by the rule laid down by the Court of Appeal in *Ex parte Walton* 17 Ch. D. 756, and adopted by the House of Lords in *Hill* v. *East and West India Dock Company* 9 App. Ca. 448 (noted vol. 20, p. 315), to the effect that when a statute enacts that a certain state of facts shall be deemed to exist, which do not in fact exist, that the purpose for which that fiction is converted into fact is to be ascertained by the Court and the statute making the fiction a legal fact is to be confined to that particular purpose. We believe the purpose for which the clause in the Wills Act, to which we have referred, was passed was, primarily, to prevent intestacy as to lands acquired after the making of a will; the words, however, of the statute appear quite wide enough to warrant the construction that every will is to be construed according to the state of the law existing at the time of the testator's death, even though it may have been varied by statute between the making of the will and the death of the testator.