

DIVISIONAL COURT.

MAY 17TH, 1911.

HAMILTON v. PERRY.

Husband and Wife—Division Court Action Against—Consent to Judgment—Personal Judgment Against Wife—Married Women's Property Act of 1897—Prohibition—Amendment of Judgment—Scandalous Affidavit—Costs.

Appeal by the defendant Jane Perry from the order of CLUTE, J., in Chambers, of the 24th March, 1911.

The appeal was heard by MULOCK, C.J., TEETZEL and MIDDLETON, J.J.

W. J. Clark, for the defendant.

John King, K.C., for the plaintiff.

MIDDLETON, J.:—A summons was on the 12th August, 1892, issued in the 2nd Division Court of Dufferin against the defendants, husband and wife, upon a note or agreement dated the 18th December, 1890. Nothing appeared to indicate the coverture of the defendant Jane Perry.

On the 12th September, 1892, the defendants consented to judgment, but this consent was not acted on until the 3rd October, 1897, when a judgment was entered as of the date of the consent, for the amount sued for, \$111.32. This judgment was a personal judgment, and not in the form proper to a judgment against a married woman.

It is quite clear that prior to the amendment to the Married Women's Property Act of 1897, there was no personal liability in respect of the contracts of a married woman, and no judgment could be recovered against her personally. The relation of debtor and creditor existed only in the sense that the judgment creditor could obtain judgment against her separate property, and obtain payment out of it. Prior to the Act of 1882 in England, and of 1884 in Ontario, the creditor could only look to the property she had at the date of the contract, but after these dates her contract bound her after acquired separate property. As stated in *Stogden v. Lee*, [1891] 1 Q.B. 661: "A married woman cannot contract so as to bind her separate property, unless she has some separate property existing at the date of the contract, but if she has such property, her contract will bind it, and also her after acquired separate property." This of course does not mean "bind it" as a mortgage or charge, but only bind