

THE MARRIED WOMAN'S PROPERTY ACT OF 1884.

B. Div., and affirming *Coulson v. Ingram*, 27 Chy. Div. 632, that this Act is not retrospective, and in no way affects the contracts of married women made before the Act was passed.

It has been decided that a married woman under this Act may bring an action for the recovery of damages in respect to torts suffered by her before the Act came in force. See *Weldon v. Winslow*, 13 Q. B. Div. 784. In the case of *Weldon v. Debathe*, 14 Q. B. Div. 339, it was decided that a woman married since the Married Woman's Act of 1870 of the Imperial Legislature (which is similar to our Married Woman's Act of 1872), and acquiring by her own earnings a dwelling-house, can bring an action for trespass against any one entering her dwelling under her husband's authority and for a purpose unconnected with her husband's desire to cohabit with her. This decision leaves yet undecided whether a married woman can expel her husband from her dwelling (held by her as separate estate) in case she wishes no longer to cohabit with him. It would seem that if her reason for wishing to expel him were a valid and proper reason, she would have such power; and it would further almost appear (for in the case last cited the question merely was suggested but not decided) that under any circumstances she has such power if she so wishes to prevent her husband from entering her dwelling even for the purpose of cohabitation. In other words, if she expelled him from her dwelling, an action of trespass on his part would not lie against her. This point is incidentally discussed in the case of *McGuire v. McGuire*, 23 C. P. 123, where it was held that a married woman could not bring an action of trover against her husband for refusing to deliver to her her furniture, she having left her husband without just cause. The judgment of the Court in that case, given by Mr. Justice Gwynne, has been

somewhat shaken by the case of *Lawson v. Laidlaw*, so far as the reasoning of the learned Judge is concerned, and it certainly seems strange that a married woman's separate estate should not possess the usual qualities of separate estate when in the joint possession of her husband and herself for marital purposes, when the Act declares that such property is her separate property, and free from the control of her husband. It is not unlikely that if this question be again fairly raised either as regards the furniture of a married woman, or as regards her real estate, the same being her separate estate, it will be decided that she has, under the Act of 1884 at any rate, absolute control over such property, even to the extent necessary to deprive her husband of the enjoyment thereof jointly with herself. It is difficult to see how that which the Act says is the separate property of a married woman, and free from the control of her husband, can have any other quality than that which is ordinarily possessed by the separate property of a married woman. She can certainly sell such property with, or without, her husband's consent, and she can bind it by her contracts, both of which would deprive her husband of the enjoyment of it. The necessary consequence would seem to be that her control over such property is so absolute as to enable her to deprive her husband of the enjoyment thereof under any circumstances when she sees fit so to determine.

Another point necessarily arising in the construction of this Act will be as to the power of a married woman to convey her separate estate. *Boynton v. Collins*, 27 Chy. Div. 604, decides that the real estate held by a married woman before the Married Woman's Property Act of 1882 in reversion or remainder, and which has fallen into possession since the passing of that Act, is within section 5 of the Act, and may be transferred by her without the con-