

LOGIE, J.

MARCH 21ST, 1919.

RE BUDD AND TRIPP.

*Husband and Wife—Conveyance of Land by Husband to Wife—
Right of Wife to Convey without Assent of Husband—Tenancy
by Curtesy—Inchoate Right—Married Women's Property Act,
secs. 4(1), 6(3).*

Motion by a purchaser of land for an order, under the Vendors and Purchasers Act, declaring that an objection to the title is valid and that a good title has not been shewn.

The motion was heard in the Weekly Court, Toronto.

W. Lawr, for the purchaser.

J. Y. Murdoch, for the vendor.

LOGIE, J., in a written judgment, said that Mary Christina Budd married Albert Thomas Budd in 1895. There was issue born alive. By deed dated the 4th January, 1908, Albert Thomas Budd conveyed the land in question to his wife, who now desired to sell the same without his consent. The purchaser objected that the husband was entitled to a tenancy by the curtesy in this land, and should be a party to the deed.

The learned Judge was not of that opinion. He pointed out that there is no inchoate right of tenancy by the curtesy. As to the position of a married woman, he referred to *Shuttleworth v. McGillivray* (1903), 5 O.L.R. 536; the Married Women's Property Act, R.S.O. 1897 ch. 163, sec. 3 (1), now R.S.O. 1914 ch. 149, sec. 4(1).

But it was contended that sec. 6(3) of the present Act limits the generality of sec. 4(1) and prevents its application to property received by a married woman during coverture from her husband.

With that contention the learned Judge did not agree. He pointed out that sub-sec. 3 of sec. 6 of the present Act was the last paragraph of sub-sec. 2 of sec. 5 of the former Act, and in that Act affected only the rights which a woman married between the 4th May, 1859, and the 2nd March, 1872, had under that sub-section. Its reprint as a separate sub-section in the Act of 1914, following as it does sub-sec. 2 of sec. 6 of that Act (a reprint of the remainder of sub-sec. 2 of sec. 5 of the Act of 1897), did not widen it or give it any greater effect.

To hold otherwise would stultify the whole Act and run contrary not only to judicial opinion but to the whole trend of legislative action.

Therefore Albert Thomas Budd was not a necessary party to