

Married Women's Property.

Act No. 45, 1901.

An Act to consolidate enactments relating to MARRIED WOMEN'S PROPERTY.
rights and liabilities of married women. [8th
November, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Married Women's Property Act, 1901." short title.

2. The Act mentioned in the Schedule to this Act is, to the extent therein expressed, hereby repealed. Repeal.

3. (1) A married woman shall be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a femme sole, without the intervention of any trustee. Married woman to be capable of holding property and of contracting as a femme sole.

(2) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a femme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise. 56 Vic. No. 11, s. 1.

(3) Every contract entered into by a married woman on or after the seventeenth day of April, one thousand eight hundred and ninety-three, being the day of the commencement of the Married Women's Property Act, 1893, shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary is shown.

(4) Every contract entered into by a married woman on or after the said seventeenth day of April, one thousand eight hundred and ninety-three, with respect to and to bind her separate property shall bind not only the separate property if any which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire, whether during her then coverture or any future coverture, and, in the event of her becoming discovert, all property acquired by her during discoverture, and the same

Married Women's Property.

same shall be liable to satisfy any judgment, decree, or order in respect of such contract, notwithstanding that such woman had no separate property at the date of such contract, or at the date of such judgment, decree, or order, or that she was discovert at the date of such judgment, decree, or order.

(5) Nothing contained in this Act shall render a married woman liable to imprisonment for debt.

(6) No separate property subject to restraint against anticipation shall be liable for any debt contracted during coverture, or shall be rendered so liable by determination of coverture, nor shall any money be so liable which is payable under any policy of insurance effected by any husband of the debtor.

Will of married women.
56 Vic. No. 11, s. 2.

4. The will of a married woman made on or after the said seventeenth day of April, one thousand eight hundred and ninety-three, shall be as effectual both in respect of any separate property afterwards acquired by her during her then coverture, and, in the event of her becoming discovert, in respect of any property acquired by her during discoverture, as the will of a man now is in respect of property acquired by him after the date thereof.

Property of a woman married after the 17th April, 1893, to be held by her as a femme sole.
Ibid. s. 3.

5. Every woman who has married on or after the said seventeenth day of April, one thousand eight hundred and ninety-three, or who marries hereafter, shall be entitled to have and hold as her separate property, and to dispose of in manner aforesaid, all real and personal property belonging to her at the time of marriage, or acquired by or devolving upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation engaged in, or carried on, by her separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by wife to husband.
Ibid. s. 4.

6. Any money or other estate of the wife, lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate, after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Execution of general power.
Ibid. s. 5.

7. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, in the same manner as her separate estate is made liable under this Act.

Property acquired on or after the 17th April, 1893, by a woman married before that date to be held by her as a femme sole.
Ibid. s. 6.

8. Every woman married before the said seventeenth day of April, one thousand eight hundred and ninety-three, shall be entitled to have and to hold, and to dispose of in manner aforesaid, as her separate property, all real and personal property, her title to which, whether vested

Married Women's Property.

vested or contingent, and whether in possession, reversion, or remainder, accrued or accrues on or after the said day, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

9. Every chose in action to which a married woman was entitled after the sixteenth day of April, one thousand eight hundred and ninety-three, or is hereafter entitled, shall be deemed to be a property, the title to which accrued or accrues on or after the said seventeenth day of April, one thousand eight hundred and ninety-three.

Choses in action when deemed to accrue. 56 Vic. No. 11, s. 7.

10. (1) All deposits in any post office or other savings bank, or in any other bank, all annuities granted by any person, company, or corporation, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, which were on the said seventeenth day of April, one thousand eight hundred and ninety-three, standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, and other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which were on the said day standing in her sole name, shall be deemed, unless and until the contrary is shown, to have been the separate property of such married woman.

As to stock, &c., to which a married woman is entitled. *Ibid.* s. 8.

(2) The fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, share, stock, debenture, debenture stock, or other interest as aforesaid, was on the said day standing in the sole name of a married woman, shall be evidence that she was beneficially entitled thereto for her separate use, so far as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Governments of the Commonwealth of Australia and of the State of New South Wales, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

11. (1) All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which, since the said seventeenth day of April, one thousand eight hundred and ninety-three, have been or hereafter are allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary is shown, to have been or to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate alone was or is liable, whether the same was

As to stock, &c., to be transferred, &c., to a married woman. *Ibid.* s. 9.

or

Married Women's Property.

or is so expressed in the document whereby her title to the same was or is created or certified, or in the books or register wherein her title was or is entered or recorded, or not.

(2) Nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, by-law, articles of association, or deed of settlement regulating such corporation or company.

Investments in joint names of married women and others.
56 Vic. No. 11, s. 10.

12. All the provisions hereinbefore contained as to deposits in any post-office or other savings bank, or in any other bank, annuities granted by any person, company, or corporation, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, shares, stocks, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which were on the said seventeenth day of April, one thousand eight hundred and ninety-three, standing in the sole name of a married woman, or which, after that time, have been or are allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interests of the married woman, to any of the particulars aforesaid which, at the said day, or at any time afterwards, were or are standing in, or allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

As to stock, &c., standing in the joint names of a married woman and others.
Ibid. s. 11.

13. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or hereafter standing in the sole name of any married woman, or in the joint names of such married women and any other person not being her husband.

Fraudulent investments with money of husband.
Ibid. s. 12.

14. (1) If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, has been or hereafter is made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under

Married Women's Property.

under section twenty-two of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband.

(2) Nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors, but any moneys so deposited or invested may be followed as if this Act or the Acts hereby repealed had not passed.

15. The benefit of every policy of life assurance heretofore or hereafter effected by a married woman by virtue of this or any other Act shall enure for her separate use unless otherwise expressed therein. Married women's insurance policies. 56 Vic. No. 11, s. 13.

16. (1) Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a femme sole; but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. Remedies of married woman for protection and security of separate property. Ibid. s. 15.

(2) In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property.

(3) No criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property has been wrongfully taken or such act done by the husband when leaving or deserting, or about to leave or desert his wife.

(4) For the purposes of this Act a wife compelled to leave her husband's residence under reasonable apprehension of danger to her person, or under other circumstances which may reasonably justify her withdrawal from such residence, shall be deemed to have been left and deserted by her husband. Constructive desertion.

17. (1) A woman after her marriage—

(a) shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and contracts entered into or wrongs committed by her before her marriage including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; Wife's ante-nuptial debts and liabilities. Ibid. s. 16.

(b)

Married Women's Property.

(b) may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property.

(2) As between a married woman and her husband, unless there is any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof. Nothing in this Act shall operate to increase or diminish the liability of any woman married before the said seventeenth day of April, one thousand eight hundred and ninety-three, for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she has or may become entitled by virtue of this Act or the Married Women's Property Act, 1893, and to which she would not have been entitled for her separate use if this Act or the Married Women's Property Act, 1893, had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

56 Vic. No. 11, s. 17.

18. (1) A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he has acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been bona fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs, for or in respect of which his wife was liable before her marriage as aforesaid, but he shall not be liable for the same any further or otherwise.

(2) Any Court in which a husband is sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property.

(3) Nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the seventeenth day of April, one thousand eight hundred and ninety-three, for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for ante-nuptial liabilities.

Ibid. s. 18.

19. (1) A husband and wife may be jointly sued in respect of any such debt or other liability (whether for contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them.

(2) If in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife

Married Women's Property.

so acquired by him, or to which he has become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him.

(3) In any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property, and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

20. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband. Act of wife liable to criminal proceedings. 56 Vic. No. 11, s. 19.

21. In any criminal proceedings against a husband or a wife authorised by this Act, or by the Married Women's Property Act, 1893, the husband and wife respectively shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence. Husband or wife competent witness in criminal proceedings. Ibid. s. 20.

22. (1) In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as is mentioned in section ten, in whose books any stocks, funds, or shares of either party are standing, may apply, by summons or otherwise in a summary way, to any Judge of the Supreme Court, or (if the value of the property in dispute does not exceed two hundred pounds) to any Judge of the District Court within whose jurisdiction the property is, and such Judge may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he thinks fit. Questions between husband and wife as to property to be decided in a summary way. Ibid. s. 21.

(2) Any order of a Judge of the Supreme Court to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same Judge in a suit or action pending in the said Court.

(3) Any order of a District Court or Judge thereof under the provisions of this section shall be subject to appeal in the same way as any other order made by the same Court or Judge.

(4) The Judge of the Supreme Court or District Court, if either party so require, may hear any such application in his private room.

(5) Any such bank, corporation, company, public body, or society as aforesaid shall, in the matter of any such application for the purposes of the costs or otherwise be treated as a stakeholder only.

Married Women's Property.

Married woman as
an executrix or
trustee.
56 Vic. No. 11, s. 22.

23. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may convey or join in conveying any land, or transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a femme sole.

24. (1) Notwithstanding that a married woman is restrained from anticipation, the Supreme Court, in its equitable jurisdiction, may, where it appears to the Court to be for her benefit, by decree or order, with her consent, bind her interest in any property.

(2) Except as provided in this section nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument.

(3) No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

25. A married woman, whether an infant or not, may, as if she were unmarried and of full age, by deed appoint an attorney on her behalf for the purpose of executing any deed, or doing any other act which she might herself execute or do.

26. In the construction of any gift or limitation of real or personal property made after the sixteenth day of April, one thousand eight hundred and ninety-three, by any will, deed, or other instrument, to more than one individual jointly or in common, a husband and wife shall not be regarded as one person for the purpose of deciding the proportionate shares of such individuals respectively, unless a contrary intention therein appears.

27. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate and as a trustee thereof have the same rights and liabilities as she would have and be subject to the same jurisdiction as she would be if she were living.

28.

*Repealed by the
Commonwealth
Act*
The Equity Court
may remove a
restraint against
anticipation.

Ibid. s. 23.

Saving of existing
settlements and the
power to make future
settlements.

Power to appoint
attorney.

Ibid. s. 24.

Joint gifts of
property to
husband and wife.

Ibid. s. 25.

Legal representative
of married woman.

Ibid. s. 27.

Dairies Supervision.

28. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or inter-meddled in the trust or administration.

Interpretation of terms.
56 Vic. No. 11, s. 28.

The word "property" in this Act includes a chose in action.

SCHEDULE.

Reference to Act.	Title of Act.	Extent of repeal.
56 Vic. No. 11 ...	Married Women's Property Act, 1893.	The whole, except s. 13 from the words "policy of assurance" to the end of the section, and s. 14.