

No. XI.

MARRIED WOMEN'S
PROPERTY.An Act to amend the Law relating to the
Rights and Liabilities of Married Women.
[20th March, 1879.]

Preamble.

WHEREAS it is desirable to assimilate as far as practicable the statute law of this Colony relating to property and contract so far as relates to married women to the statute law of England Be it therefore enacted by the Queen'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 :—

Short title.

1. This Act may be cited for all purposes as the "Married Women's Property Act."

Earnings of married women to be deemed their own property.
(33 and 34 Vic. c. 93 sec. 1.)

2. The wages and earnings of a married woman acquired or gained by her after the passing of this Act in any employment occupation or trade in which she is engaged or which she carries on separately from her husband or after desertion by him and also any money or property so acquired by her through the exercise of any literary artistic or scientific skill and all investments of such wages earnings money or property (and for the purposes of this Act the term "investments" includes conversion into real estate or reconversion thereof into personalty) shall be deemed and taken to be property held and settled to her separate use independent of any husband to whom she may be married and her receipts alone shall be a good discharge for such wages earnings money and property.

Deposits in Savings Banks by a married woman to be deemed her separate property.
(*Ib.* sec. 2.)

3. Any deposit hereafter made in any Savings Bank in the name of a married woman or in the name of a woman who may marry after such deposit shall be deemed to be the separate property of such woman and the same shall be accounted for and paid to her as if she were an unmarried woman Provided that if any such deposit is made by a married woman by means of moneys of her husband without his consent the Court may upon application under section nine of this Act order such deposit or any part thereof to be paid to the husband.

As to married woman's property in a joint stock company.
(*Ib.* sec. 4.)

4. A married woman or woman about to be married may apply in writing to the directors or manager of any incorporated or joint stock company that any fully paid-up shares or any debenture or debenture stock or any stock of such company to the holding of which no liability is attached and to which the woman so applying is entitled may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use And it shall be the duty of such directors or manager to register such shares or stock accordingly and the same upon being so registered shall be deemed to be the separate property of such woman and shall be transferred and the dividends and profits paid as if she were an unmarried woman Provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent the Court may upon an application under section nine of this Act order such investment and the dividends and profits thereon or any part thereof to be transferred and paid to the husband.

Proviso.

As to married woman's property in a friendly society.
(*Ib.* sec. 5.)

5. A married woman or woman about to be married may apply in writing to the committee of management of or to the trustees of any society duly registered under the "Friendly Societies Act of 1873"

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1873" or any Act in force for the time being regulating Friendly Benefit Building or Co-operative Trading Societies that any share benefit right or claim whatsoever in to or upon the funds of such society to the holding of which share or benefit no liability is attached and to which the woman so applying is entitled may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use And it shall be the duty of such committee or trustees to cause the same to be so entered and thereupon such share benefit right or claim shall be deemed to be the separate property of such woman and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman Provided that if such share benefit right or claim has been obtained by a married woman by means of moneys of her husband without his consent the Court may upon an application under section nine of this Act order the same and the dividends and profits thereon or any part thereof to be transferred and paid to the husband.

6. Nothing hereinbefore contained shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors or when he was in fact insolvent and any moneys so deposited or invested may be followed as if this Act had not been passed. Deposit of moneys in fraud of creditors invalid. (Ib. sec. 6.)

7. Where a woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate or under any deed or will such property shall subject and without prejudice to the trusts of any settlement affecting the same belong to the woman for her separate use and her receipts alone shall be a good discharge for the same. What personal property coming to a married woman to be her own. (Ib. sec. 7.)

8. Where a woman married after the passing of this Act shall become entitled under the "Real Estate of Intestates Distribution Act of 1862" or any Act amending the same to an estate of freehold in real estate or to any interest in the proceeds of any sale thereof the interest in such proceeds or the rents and profits of such property shall subject and without prejudice to the trusts of any settlement affecting the same belong to such woman for her separate use and her receipts alone shall be a good discharge for the same. Property coming to a married woman rents and profits only to be her own. (Ib. sec. 8 adapted.)

9. In any question between husband and wife as to property declared by this Act to be or claimed thereunder as the separate property of the wife either party may apply by summons to a Judge of the Supreme Court who may thereupon make such order direct such inquiry and award such costs as he shall think fit And the Judge may if either party so require hear the application in his private room Provided that any such order shall be subject to appeal to the Supreme Court. How questions of ownership of property to be settled. (Ib. sec. 9 adapted.)

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use and the same and all benefit thereof if expressed upon the face of it to be so effected shall enure accordingly and the contract in such policy shall be as valid as if made with an unmarried woman A policy of insurance effected by any married man on his own life and expressed upon the face of it to be for the benefit of his wife or of his wife and children or any of them shall enure and be deemed to be a trust for the benefit of his wife for her separate use and of his children or any of them according to the interest so expressed and shall not so long as any object of the trust remains be subject to the control of the husband or forms part of his estate When the sum secured by the policy becomes payable or at any time previously a trustee thereof may be appointed by the Supreme Court and the receipt of such trustee shall be a good discharge to the office or form part of his estate Provided that if it shall be proved

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proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid. Provided also that nothing in this section contained shall be deemed to affect the "Life Assurance Encouragement Act of 1862."

Married woman may maintain an action.
(*Ib.* sec. 11.)

11. A married woman may maintain an action in her own name for the recovery of any wages earnings money and property by this Act declared to be or claimed thereunder as her separate property or of any property belonging to her before marriage and which her husband shall by any writing under his hand have agreed with her shall belong to her after marriage as her separate property which property is hereby declared to be her separate property or of any property settled to her separate use and she shall have in her own name the same remedies both civil and criminal against all persons whomsoever for the protection and security of such wages earnings money and property and of any chattels or other property purchased or obtained by means thereof for her own use as if such wages earnings money chattels and property belonged to her as an unmarried woman and in any indictment or other proceeding it shall be sufficient to allege such wages earnings money chattels and property to be her property.

Extent to which husband is liable.
(37 and 38 Vic. c. 50 ss. 1 and 2.)

12. A husband and wife married after the passing of this Act may be jointly sued for any debt of the wife's contracted before marriage or for any tort committed by the wife before marriage and the husband shall in an action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage be liable for the debt or damages respectively to the extent only of the assets hereinafter specified and in addition to any other plea may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified or confessing his liability to some amount which amount he shall pay into Court that he is not liable beyond what he so confesses and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned.

If husband without assets he shall have judgment for costs.
(*Ib.* sec. 3.)

13. If it is not found in such action that the husband is liable in respect of any such assets or to an amount beyond the amount so paid into Court he shall have judgment for his costs of defence whatever the result of the action may be against his wife.

Joint and separate judgment against husband and wife.
(*Ib.* sec. 4.)

14. When a husband and wife are sued jointly if by confession or otherwise 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 and wife and as to the residue if any of such debt or damages the judgment shall be a separate judgment against the wife.

Assets for which husband liable.
(*Ib.* sec. 5.)

15. The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows :

- (1.) The value of the personal estate in possession of the wife which shall not become or be separate property under this Act
- (2.) The value of the choses in action of the wife which the husband shall have reduced into possession or which with reasonable diligence he might have reduced into possession
- (3.) The value of the chattels real of the wife which shall have vested in the husband and wife
- (4.) The value of the rents and profit of the real estate of the wife which the husband shall have received or with reasonable diligence might have received

(5.)

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- (5.) The value of the husband's estate or interest in any property real or personal which the wife in contemplation of her marriage with him shall have transferred to him or to any other person
- (6.) The value of any property real or personal which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors

Provided that when the husband after marriage pays any debt of his wife or has a judgment *bonâ fide* recovered against him in any such action as in this Act mentioned then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.
