

No. XI.

An Act to amend the law relating to the MARRIED WOMEN'S
PROPERTY.
Rights and Liabilities of Married Women.
[17th April, 1893.]

WHEREAS it is desirable to assimilate as far as practicable the Preamble.
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:—

1. (I) A married woman shall be capable of acquiring, holding, Married woman to be
capable of holding
property and of
contracting as a
feme sole.
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 *feme sole*,
without the intervention of any trustee.

(II) 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 *feme
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.

(III) Every contract entered into by a married woman after
the passing of this Act, shall be deemed to be a contract entered into
by her with respect to and to bind her separate property, unless the
contrary be shown.

(IV) Every contract entered into by a married woman after
the passing of this Act, 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 which shall be acquired by her during
discoverture. And the 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: Provided that nothing
contained in this Act shall render a married woman liable to imprison-
ment for debt: Provided also that 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.

2. The will of a married woman made after the passing of this Will of married
woman.
Act shall be as effectual both in respect of any separate property after-
wards 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.

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Property of a woman married after the Act, to be held by her as a *feme sole*.

3. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by wife to husband.

4. 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.

5. 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 after the Act by a woman married before the Act to be held by her as a *feme sole*.

6. Every woman married before the commencement of this Act 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 or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

Choses in action when deemed to accrue.

7. Every chose in action to which a married woman shall be entitled after the passing of this Act shall be deemed to be a property, the title to which accrues after the commencement of this Act.

As to stock, &c., to which a married woman is entitled.

8. 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 at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or 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 at the commencement of this Act are standing in her sole name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and 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, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so 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 Postmaster-General, the Government of the Colony 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.

As to stock, &c., to be transferred, &c., to a married woman.

9. 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,

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body, or society as aforesaid, which, after the commencement of this Act, shall be 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 be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not: Provided always that 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.

10. 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, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be 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 interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be 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.

Investments in joint names of married women and others.

11. 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 shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

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

12. 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, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section eighteen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and 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 had not passed.

Fraudulent investments with money of husband.

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Moneys payable under policy of assurance not to form part of estate of the insured.

13. 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. A policy of assurance effected before or after the passing of this Act by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, or by will, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the "Trustee Act, 1852," or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

How insurance moneys to be distributed.

14. Subject to any provisions expressed in any policy referred to in the last preceding section, the person effecting such insurance shall have power to appoint, by deed or will what shares or interests in the moneys secured thereby shall accrue to each of the persons for whose benefit the insurance was expressed to be made. In default of such appointment, or so far as the same does not extend, then, subject as aforesaid, children expressed in any such policy shall be entitled in equal shares, and, when a wife or husband is expressed to be benefited together with a child or children, such wife or husband shall be entitled to the whole for life, and such child or such children in equal shares shall be entitled to the remainder.

Remedies of married woman for protection and security of separate property.

15. 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 *feme sole*; but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property: Provided always that 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,

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wife, unless such property shall have been wrongfully taken or such act done by the husband when leaving or deserting, or about to leave or desert his wife, and 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 and taken to have been left and deserted by her husband.

16. A woman after her marriage 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; and she 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; and, as between her and her husband, unless there be 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: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Act hereby repealed or otherwise, if this Act had not passed.

Wife's ante-nuptial debts and liabilities.

17. 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 shall have 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 *bonâ 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, and any Court in which a husband shall be 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: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

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

18. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by 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; and 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 so acquired by him, or to which he shall have 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; and 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

Suits for ante-nuptial liabilities.

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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.

Act of wife liable to criminal proceedings.

19. 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.

Husband or wife competent witness in criminal proceedings.

20. In any criminal proceeding against a husband or a wife authorised by this Act, the husband and wife respectively shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence.

Questions between husband and wife as to property to be decided in a summary way.

21. 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 aforesaid, 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 of New South Wales, or (if the value of the property in dispute shall not exceed two hundred pounds) to any Judge of the District Court within whose jurisdiction the property shall be, and the Judge of the Supreme Court or of the District Court (as the case may be) 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 shall think fit: Provided always that 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 would be; and 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 would be: Provided also that the Judge of the Supreme Court or District Court if either party so require, may hear any such application in his private room: Provided also that 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 woman as an executrix or trustee.

22. 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 *feme sole*.

44 and 45 Vic., c. 41, s. 39.

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

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

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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; but 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.

24. A married woman, whether an infant or not, shall after the passing of this Act have power, as if she were unmarried and of full age, by deed, to 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.

Power to appoint attorney.

25. In the construction of any gift or limitation of real or personal property made after the passing of this Act, 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.

Joint gifts of property to husband and wife.

26. The "Married Women's Property Act," forty-two Victoria number eleven, and an Act to amend the "Married Women's Property Act," fifty Victoria number nine, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while such Acts respectively were in force, or any right or liability of any husband or wife married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

Repeal of 42 Vic. No. 11 and 50 Vic. No. 9.

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.

Legal representative of married woman.

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 intermeddled in the trust or administration. The word "property" in this Act includes a chose in action.

Interpretation of terms.

29. This Act may be cited as the "Married Women's Property Act, 1893."

Short title.