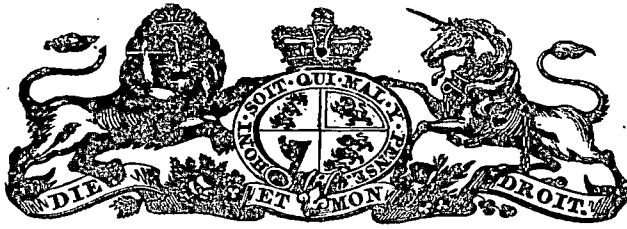


(No. 70.)



1882.

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TASMANIA.

LEGISLATIVE COUNCIL.

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**MARRIED WOMEN'S PROPERTY :**

ACTS (IMPERIAL) 1870 AND 1874, AND BILL 1882.

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Ordered by the Council to be printed, August 23, 1882.



33 AND 34 VICT. CAP. 93.

AN ACT to amend the Law relating to the Property of Married Women. A.D. 1870.  
[9th August, 1870.]

**W**HEREAS it is desirable to amend the law of property and contract with respect to married women :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. The wages and earnings of any 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, 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, 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.

Earnings of married women to be deemed their own property.

2. Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post office savings banks, any deposit hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, 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, or such annuity granted to, 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 deposit or annuity or any part thereof to be paid to the husband.

Deposits in savings banks by a married woman to be deemed her separate property.

Proviso.

3. Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman ; provided that if any such investment in the funds 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 thereof, or any part thereof, to be transferred and paid to the husband.

As to a married woman's property in the funds.

A.D. 1870.

As to a married woman's property in a joint stock company.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers 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 managers 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.

As to a married woman's property in a society.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture 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, debenture, 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 any such share, benefit, debenture, 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.

Deposit of moneys in fraud of creditors invalid.

6. Nothing herein-before contained in reference to money deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company 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, and any moneys so deposited or invested may be followed as if this Act had not passed.

Personal property coming to a married woman to be her own.

7. Where any 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 to any sum of money not exceeding two hundred pounds 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.

Freehold property coming to a married woman to be her own.

8. Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, 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.

How questions as to ownership of property to be settled.

9. In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the County Court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs, as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room.

Married woman may effect policy of insurance.

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 on 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.

As to insurance of a husband for benefit of his wife.

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 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 to his creditors, or form 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 Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the County Court of the district, or in Ireland by the chairman of the Civil Bill Court of the division of the county in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be 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.

A.D. 1870.

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 her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, 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.

Married women may maintain an action.

12. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried.

Husband not to be liable on his wife's contracts before marriage.

13. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by such and the same actions and proceedings as money lent.

Married woman to be liable to the parish for the maintenance of her husband.

14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: Provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

Married woman to be liable to the parish for the maintenance of her children.

15. This Act shall come into operation at the time of the passing of this Act.

Commencement of Act.

16. This Act shall not extend to Scotland.

Act not to extend to Scotland.

17. This Act may be cited as the "Married Women's Property Act, 1870."

Short title.

## AN ACT to amend the Married Women's Property Act (1870).

[30th July, 1874.]

**W**HEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Husband and wife may be jointly sued for her debts before marriage.

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt.

Extent to which husband liable.

2. The husband shall, in such action and in any 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 herein-after specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as herein-after specified; or, confessing his liability to some amount, 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.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

Joint and separate judgment against husband and wife for debt.

4. 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.

5. 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 have vested in the husband:
- (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 profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:
- (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 is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

Extent of Act.

6. This Act shall not extend to Scotland.

Short Title.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874."

THE following is the Bill recently introduced by the Lord Chancellor into the House of Lords, as printed in the Supplement to "The Weekly Notes" published for the Incorporated Council of Law Reporting for England and Wales.

A BILL intituled "An Act to consolidate and amend the Acts relating to the Property of Married Women."

WHEREAS it is expedient to consolidate and amend the Acts of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Married woman to be capable of holding property and of contracting as a feme sole.

1. (1.) A married woman shall be capable of acquiring, holding, and disposing of any real or personal property as her separate property, without the intervention of any trustee.

(2.) A married woman shall, in respect of her separate property, be capable of entering into and rendering herself liable 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.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to her separate property shall bind, not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a separate trade shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and hold as her separate property 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, or by the exercise of any literary, artistic, or scientific skill.

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

3. Every woman married before the commencement of this Act shall be entitled to have and hold 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.

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

4. All deposits, annuities, and sums forming part of the public stock or funds, which at the commencement of this Act are standing in the name of a married woman, and to which she is beneficially entitled, and all shares, stock, debentures, debenture stock, or other interests in any company or society which at the commencement of this Act are standing in her name, and to which she is beneficially entitled, shall be deemed to be the separate property of such married woman; and the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every company, society, and savings bank shall, on the application of such married woman, and on sufficient evidence of her title being produced, take notice thereof and act accordingly.

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

5. All sums forming part of the public stocks or funds, and all shares, stock, debentures, debenture stock, and other interests in any company or society which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into the name of any married woman shall be deemed to be her separate

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

property, unless and until the contrary be shown, 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.

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

6. It shall not be necessary for the husband of any married woman to join in the transfer of any sums forming part of the public stocks or funds in the books of the Governor and Company of the Bank of England or the Governor and Company of the Bank of Ireland, or any shares, stock, debentures, debenture stock, or other interests in any company or society, or any deposits in any bank which are now or shall at any time hereafter be standing in the name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

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

7. A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife 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 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 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, 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 such policy. 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, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed shall be a discharge to the office in which the policy is effected.

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

8. 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; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule, either of law or of practice, to the contrary notwithstanding: 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, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

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

9. A husband shall not be liable for the debts of his wife contracted before marriage except to the extent of any property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife; 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.

**Husband not to be liable for wife's torts.**

10. No husband shall by reason of the marriage be liable in damages for any wrong committed by his wife except for wrongs committed by her before marriage, to the same extent as he is herein-before made liable for debts of his wife contracted before marriage.

**Act of wife liable to criminal proceedings.**

11. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to the 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.

12. In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill 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 High Court of Justice 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 pending in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear such application in his private room.

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

13. 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; 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.

Saving of existing Settlements, and the power to make future Settlements.

14. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

Married woman to be liable to the parish for the maintenance of her husband.

15. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as a widow is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Married woman to be liable to the parish for the maintenance of her children.

16. [Repeals Acts of 1870 and 1874.]

17. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-two. [1883.]

Commencement of Act.

18. [Not to extend to Scotland.]

19. This Act may be cited as the "Married Women's Property Act, 1881." [1882.]

Short Title.