

CHAPTER 81.

Of the Property of Married Women.

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1. (1) A married woman shall, in accordance with the provisions of this chapter, 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 *feme sole*, without the intervention of any trustee.

(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 *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.

- (3) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shewn.
- (4) Every contract entered into by a married woman with respect to and to bind 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 all separate property which she may thereafter acquire.
- (5) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the Insolvency laws in the same way as if she were a *feme sole*.

2. Every woman married after the twenty-first day of April, one thousand eight hundred and eighty-three, 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 or 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.

3. 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 insolvency, 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.

4. 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 chapter.

5. Every woman, married before the twenty-first day of April, one thousand eight hundred and eighty-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 or contingent, and whether in possession, reversion or remainder, shall accrue after the said date, including any wages, earnings, money and property so gained or acquired by her as aforesaid.

6 All deposits in any savings' bank, or in any other bank, and all sums of money forming part of the public debt of this colony, and all Government debentures, and all shares, stock, debentures, debenture stock, or other interests of or in any bank, corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, building or loan society, which on the twenty-first day of April, one thousand eight hundred and eighty-three, are standing in the sole name of any married woman, shall be deemed, unless and until the contrary be shewn, to be the separate property of such married woman, and the fact that any such deposit, sum or sums of money forming part of the said public debt, 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 authorize 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 Receiver General and all directors, managers and trustees of every such bank, corporation, company, public body or society as aforesaid, in respect thereof.

7. All sums forming part of the public debt of this colony, and all such deposits as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock or other interests of or in any such bank, corporation, company, public body or society as aforesaid, which, after the twenty-first day of April, one thousand eight hundred and eighty-three, 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 shewn, 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 registered or recorded, or not: provided always, that nothing in this chapter shall require or authorize any bank, corporation or 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 the Legislature of this colony, or of any charter, bye-law, article of association, or deed of settlement regulating such bank, corporation or company.

8. All the provisions hereinbefore contained as to deposits in any savings' bank, or in any other bank, sums forming part of the public debt of this colony, Government debentures, shares, stock, debentures, debenture stock or other interests of or in any such bank, corporation, company, public body or society as aforesaid, respectively, which on the twenty-first day of April, A. D. 1883, 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 be 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 on the twenty-first day of April, A. D. 1883, or at any time afterward, shall be standing in, or 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.

9. 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 deposits as aforesaid, or any sum forming part of the public debt of this colony, or of any Government debentures, or of any share, stock, debenture, debenture stock or other benefit, right, claim or other interest of or in any such bank, 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 persons or person, not being her husband.

10. If any investment in any such deposit as aforesaid, or in any part of the public debt of this colony, or in any Government debenture, or in any share, stock, debenture or debenture stock of or in any bank, 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 Supreme Court or a judge thereof may, upon an application under section seventeen of this chapter, order such investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this chapter contained shall give validity, as against the 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 monies of the husband made by or in the name of his wife in fraud of his creditors; but any monies so deposited or invested may be followed as if this chapter had not been passed.

11. A married woman may, by virtue of the power of making contracts hereinbefore contained, 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 shall enure accordingly. A policy of assurance effected by a 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 of 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 assured,

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 assured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid. The assured 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 any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the assured and his or her legal personal representatives, in trust for the purposes aforesaid. If at the time of the death of the assured, 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 the Supreme Court or a judge thereof. The receipt of a trustee or trustees duly appointed, or in default of any such appointment, or in default of notice to the assurance office, the receipt of the legal personal representative of the assured shall be a discharge to the office for the sum secured by the policy, or for the value thereof in whole or in part.

12. Every woman, whether married before or after the twenty-first day of April, A. D. 1883, 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 of law to the contrary notwithstanding: provided always, that no criminal proceeding shall be taken by any wife against her husband, by virtue of this chapter, 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.

13. 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 all contracts entered into, or wrongs committed by her before her marriage; 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 chapter shall operate to increase or diminish the liability of any woman, married before the said twenty-first day of April, A. D. 1883, 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 chapter, and to which she would not have been entitled for her separate use if this chapter had not passed.

14. 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, to the extent of all property whatsoever belonging to 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, and any Court in which a husband shall be sued for any such debt shall have power to direct any enquiry or proceedings which it may think proper, for the purpose of ascertaining the nature, amount and value of such property: provided always, that nothing in this chapter contained shall operate to increase or diminish the liability of any husband married before the twenty-first day of April, A. D. 1883, for or in respect of any such debt or other liability of his wife as aforesaid.

15. 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 to 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 the 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.

16. 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 chapter, shall in like manner be liable to criminal proceedings by her husband.

17. In any question between husband and wife, as to the title to or possession of property, either party, or any such bank, corporation, public body, company, or society, as aforesaid, in whose books any stocks, funds, or shares of either party are standing, or in case of investment in the public debt of this colony, the Receiver General for the time being may, on giving notice to the other party, apply to a Judge of the Supreme Court, and thereupon such Judge shall make such order, direct such enquiry, and award such costs as he shall think fit; provided, that when any order is made by such Judge, either party, or any such bank, corporation, company, public body, or society, as aforesaid, or such Receiver General, shall be entitled to a rehearing, and the Judge may, if either party, or any such bank, corporation, company, public body, or society, as aforesaid, or such Receiver General, so require, hear the application in his private room; provided also, that any such bank, corporation, company, public body or society, as aforesaid, or such Receiver General, shall, in the matter of any such application, for the purposes of costs or otherwise, be treated as a stake holder only.

18. 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 transfer, or join in transferring, any such deposit, as aforesaid, or any sum forming part of the public debt of this colony, or any Government debenture, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of, or in any such bank, corporation, company, public body, or society, in that character, without her husband, as if she were a *feme sole*.

19. Nothing in this chapter 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 hereafter to be 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 her 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.

20. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grand-children, as the husband is now by law subject to for the maintenance of her children and grand-children; provided always, that nothing in this chapter shall relieve her husband from any liability imposed upon him by law to maintain her children or grand-children.

21. Nothing in this chapter contained shall affect any act done or right acquired while the Married Woman's Property Act of 1876 was in force, or any right or liability of any husband or wife, married before the twenty-first day of April, A. D. 1883, to sue or be sued, under the provisions of the said Married Woman's Property Act of 1876, 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 twenty-first day of April, 1883.

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

23. The word "contract" in this chapter shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this chapter, as to the 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 chapter includes a *chose in action*.