

401

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
4th July, 1883.

Hon. Mr. Whitaker.

MARRIED WOMEN'S PROPERTY.

ANALYSIS.

- | | |
|---|---|
| <p>Title.</p> <p>1. Short Title. Commencement of operation.</p> <p>2. Interpretation. Liability of married woman to extend to her trust estate.</p> <p>3. Married woman may hold property as a <i>feme sole</i>. May sue or be sued. As to contracts. As to bankruptcy.</p> <p>4. Property of a woman married after this Act to be held by her as a <i>feme sole</i>.</p> <p>5. Loans by wife to husband, or by husband to wife.</p> <p>6. Execution of general power.</p> <p>7. Property acquired after the Act by a woman married before the Act to be held by her as a <i>feme sole</i>.</p> <p>8. As to stock, &c., to which a married woman is entitled.</p> <p>9. As to stock, &c., to be transferred, &c., to a married woman.</p> <p>10. Investments in joint names of married women and others.</p> <p>11. As to stock, &c., standing in the joint names of a married woman and others.</p> <p>12. Fraudulent investments with money of husband.</p> | <p>13. Wife may insure her own or her husband's life to her separate use. Moneys payable under policy not to form part of property of the insured.</p> <p>14. Remedies of married women for protection and security of separate property.</p> <p>15. Wife's ante-nuptial debts and liabilities.</p> <p>16. Husband to be liable for his wife's debts contracted before marriage to a certain extent.</p> <p>17. Suits for ante-nuptial liabilities.</p> <p>18. Act of wife liable to criminal proceedings.</p> <p>19. Disputes between husband and wife as to property to be decided in a summary way.</p> <p>20. Married woman as an executrix or trustee.</p> <p>21. Saving of existing settlements, and the power of making future settlements.</p> <p>22. Married woman liable for maintenance of her husband.</p> <p>23. Married woman liable for maintenance of her children.</p> <p>24. Legal representative of married woman.</p> <p>25. Wife may not enter into partnership without husband's consent.</p> |
|---|---|

A BILL INTITLED

AN ACT to amend the Law relating to the Property of Married Women. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Married Women's Property Act, 1883." Short Title.

It shall come into operation on the first day of October, one thousand eight hundred and eighty-three. Commencement of operation.

2. In this Act,— Interpretation.
"Property" includes money and real and personal property of any kind, and includes a thing in action:
"Contract" includes the acceptance of any trust or the office of executrix or administratrix.

15 The provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or any *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 20 intermeddled in the trust or administration. Liability of married woman to extend to her trust estate. 45 and 46 Vict., c. 75, s. 24.

25 3. (1.) A married woman shall, in accordance with the provisions of this Act, 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. Married woman may hold property as a *feme sole*. 45 & 46 Vict., c. 75, s. 1.

May sue or be sued.

(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. 5 10

As to contracts.

(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 shown.

(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 also all separate property which she may thereafter acquire. 15

As to bankruptcy.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*. 20

Property of a woman married after this Act to be held by her as a *feme sole*.
45 and 46 Vict., c. 75, s. 2.

4. 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. 25 30

Loans by wife to husband;
Ib., s. 3.

5. Any money or other property of the wife lent or intrusted 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 as a creditor for the amount or value of such money or other property 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. 35

Or by husband to wife.

Any money or other property of the husband lent or intrusted by him to his wife for the purpose of any trade or business carried on by her, or otherwise, shall be treated as assets of his wife's estate in case of her bankruptcy, under reservation of the husband's claim as a creditor for the amount or value of such money or other property after, but not before, all claims of the other creditors of the wife for valuable consideration in money or money's worth have been satisfied. 40 45

Execution of general power.
Ib., s. 4.

6. 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*.
Ib., s. 5.

7. 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 50

129

Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

8. All deposits in any post office or other savings-bank, or in any other bank, all annuities, and all sums forming part of the public stocks or funds of the colony, 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 name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman.

As to stock, &c., to which a married woman is entitled. 45 and 46 Vict., c. 75, s. 6.

The fact that any such deposit, annuity, sum forming part of the public stocks or funds of this colony, 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 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 any person whomsoever, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

9. All sums forming part of the public stocks or funds of the colony, or of any other stocks or funds transferable in the books of any bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which 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.

As to stock, &c., to be transferred, &c., to a married woman. *Ib.*, s. 7.

But nothing in this Act shall require or authorize 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 the General Assembly, 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, sums forming part of the public stocks or funds of the colony, 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

Investments in joint names of married women and others. *Ib.*, s. 8.

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. 5

As to stock, &c., standing in the joint names of a married woman and others. 45 and 46 Vict., c. 75, s. 9.

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 of the colony, 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. 15

Fraudulent investments with money of husband. Ib., s. 10.

12. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds of the colony, 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 *nineteen* of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband. 20 25 30

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. 35

Wife may insure her own or her husband's life to her separate use. Ib., s. 11.

13. A married woman may, by virtue of the power of making contracts hereinbefore contained, effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly. 40

Moneys payable under policy not to form part of property of the insured. Ib., s. 11.

A policy of insurance effected 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: 45 50

But 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
 5 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,
 10 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
 15 new trustees may be appointed by any Court having jurisdiction under the provisions of "*The Trustee Act, 1883.*"

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,
 20 shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

14. 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
 25 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.

Remedies of married women for protection and security of separate property. 45 and 46 Vict., c. 75, s. 12.

30 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 practice to the contrary notwithstanding.

35 But 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
 40 such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

15. 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,
 45 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
 50 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

Wife's ante-nuptial debts and liabilities. *Ib.*, s. 13.

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. But nothing in this Act contained 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, if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.
45 and 46 Vict., c. 75, s. 14.

16. 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. But 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.

Suits for antenuptial liabilities.
Ib., s. 15.

17. 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 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.
Ib., s. 16.

18. 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.

Disputes between husband and wife as

19. In any question between husband and wife as to the title to

137

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

to property to be decided in a summary way. 45 and 46 Vict., c. 75, s. 17.

5 Court, or, if the value of the property in dispute is within the limits of the jurisdiction of an inferior Court, to the Judge of such Court, and the Judge hearing any such application may make such order with respect to the property in dispute, and as to the costs of and consequent upon the application, as he thinks fit, or may direct such
10 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; and may, if either party so require, hear such application in his private room.

Any order made under the provisions of this section shall be
15 subject to appeal in the same way as any order made by the same Judge in a suit pending in the Supreme Court or other Court respectively would be.

In the matter of any application under this section any such bank, corporation, company, public body, or society as aforesaid, shall,
20 for the purposes of costs or otherwise, be treated as a stakeholder only.

20. 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
25 join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds of the colony, 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
30 in that character, without her husband, as if she were a *feme sole*.

Married woman as an executrix or trustee. *Ib.*, s. 18.

21. 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
35 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
40 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
45 settlement made or entered into by a man would have against his creditors.

Saving of existing settlements, and the power of making future settlements. *Ib.*, s. 19.

22. Where the husband of any woman having separate property becomes destitute, a summons against the wife may be issued, and such order may be made and enforced against her for the maintenance of her husband out of her separate property as by the provisions
50 of any Act for the time being in force relating to the maintenance of destitute persons may now be made and enforced against a husband for the maintenance of his wife.

Married woman liable for maintenance of her husband. *Ib.*, s. 20.

Married woman liable for maintenance of her children.

45 and 46 Vict., c. 75, s. 21.

23. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren.

But nothing in this Act shall relieve her husband from any liability imposed on him by law to maintain her children or grandchildren.

Legal representative of married woman.

Ib., s. 23.

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

Wife may not enter into partnership without husband's consent.

25. Nothing in this Act contained shall authorize any married woman to enter into or carry on a partnership with any man other than her husband without the consent of her husband first obtained and testified by writing under his hand and seal.

All such consents shall, on payment of five shillings, be filed in the office of the Land Registrar of the district in which the husband resides; and such Registrar shall cause an alphabetical index of the same to be made and kept.

The said index may be searched at any time during office hours on payment of the sum of two shillings and sixpence, and any written consent therein contained may be examined and copied; and on payment of a further sum of five shillings the District Land Registrar shall give, under his hand and official seal, a certified copy of any such consent.