

THE MARRIED WOMEN'S PROPERTY ACT

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THE MARRIED WOMEN'S PROPERTY ACT

[1st January, 1887.]

Cap. 239.
Acts
33 of 1969,
11 of 1970,
41 of 1975,
2nd Sch.,
30 of 1995
S. 3.
4 of 2004
S. 25.

1. This Act may be cited as the Married Women's Property Act. Short title.

2. Subject to the provisions of this Act, a married woman shall— Capacity of married women.
11/1970
S. 2.

- (a) be capable of acquiring, holding and disposing of, any property; and
- (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation; and
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,

in all respects as if she were a *feme sole*.

3.—(1) Subject to the provisions of this Act all property which— Property of married women.

- (a) immediately before the 1st day of June, 1941, was the separate property of a married woman or held for her separate use in equity; or
- (b) belongs at the time of her marriage to a woman married on or after the 1st day of June, 1941; or
- (c) on or after the 1st day of June, 1941, is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly;

MARRIED WOMEN'S PROPERTY

Provided that nothing in this subsection shall interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision attaching such a restriction, contained in any enactment passed before the 1st day of June, 1941, or in any instrument executed before 1st day of September, 1941.

(2) Any instrument executed on or after the 1st day of September, 1941, shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.

(3) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation—

- (a) an instrument attaching such a restriction as aforesaid executed on or after the 1st day of September, 1941, in pursuance of an obligation imposed before that date to attach such a restriction shall be deemed to have been executed before the said 1st day of September, 1941;
- (b) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and
- (c) the will of any testator who dies after the 31st day of December, 1945, shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after the 1st day of September, 1941.

4. Subject to the provisions of this Act, the husband of a married woman shall not, by reason only of his being her husband, be liable—

Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts and obligations.

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred by her before the marriage; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt or obligation.

5. Nothing in this Act shall—

Savings.

- (a) during coverture which began before the 1st day of January, 1887, affect any property to which the title (whether vested or contingent, and whether in possession, reversion, or remainder) of a married woman accrued before that date except property held for her separate use in equity;
- (b) affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the 1st day of June, 1941;
- (c) enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before the 1st day of June, 1941, to be enforced in bankruptcy or to be enforced otherwise than against her property.

6. For the avoidance of doubt it is hereby declared that nothing in this Act—

Provisions as to husband.

- (a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;

- (b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred by her after the marriage in respect of which he would have been liable if this Act had not been passed;
- (c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and from suing or being sued either in tort or in contract or otherwise, in like manner as if they were not married;
- (d) prevents the exercise of any joint power given to a husband and wife.

As to stocks,
etc., to
which a
married
woman is
entitled.

7. All deposits in the Government or other Savings Bank, or in any other bank, all annuities granted by the Commissioners for the reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds of Great Britain or of this Island, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which on the first day of January, 1887, are standing in the sole name of a married woman, and all debentures issued under any enactment of this Island 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, building or loan, society, which on the first day of January, 1887, are standing in her name, shall be deemed, unless and until the contrary be shown, to be the property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks

or funds of Great Britain or of this Island, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other 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, so 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 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, the Accountant-General of this Island, and all directors, managers and trustees, of every such bank, corporation, company, public body or society as aforesaid, in respect thereof.

8. All sums forming part of the public stocks or funds of Great Britain or of this Island, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all debentures issued under any enactment of this Island, and all shares, stock, debentures, debenture stock and other interests of or in any such corporation, company, public body or society as aforesaid, which from and after the first day of January, 1887, 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 property in respect of which, so far as any liability may be incident thereto, she shall alone be liable:

As to stocks,
etc., to be
transferred,
etc., to a
married
woman.

Provided always that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be holder of any shares or

stock therein to which any liability may be incident, contrary to the provisions of any enactment of this Island, Act of the United Kingdom Parliament, charter, by-law, articles of association or deed of settlement, regulating such corporation or company.

Investments
in joint
names of
married
women and
others.

9. All the provisions hereinbefore contained as to deposits in any Government or other Savings Bank, or in any other bank annuities granted by the Commissioners for the reduction of the National Debt or by any other person, sums forming part of the public stocks or funds of Great Britain or of this Island, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, debentures issued under any enactment of this Island, shares, stock, debentures, debenture stock or other interests, of or in any such corporation, company, public body or society, as aforesaid respectively, which on the first day of January, 1887, 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 on the first day of January, 1887, 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 person or persons other than her husband.

As to stock,
etc., stand-
ing in the
joint names
of a married
woman and
others.

10. 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 stock or funds of Great Britain or of this Island, or of any other stocks or funds transferable as aforesaid, or any debentures, issued under any enactment of this Island, 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.

11. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds of Great Britain, or of this Island, or in any other stocks or funds transferable as aforesaid, or in any debenture issued under any enactment of this Island, 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, 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 16, 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.

12. [*Repealed by Act 30 of 1995, S. 3.*]

13.—(1) A married woman shall have the same remedies and redress by way of criminal proceedings for the protection and security of her own property as if she were a *feme sole*:

Criminal proceedings by married woman in respect of her property.
11/1970
S. 5.

Provided that no criminal proceedings shall be taken by any wife against her husband by virtue of this section 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 has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

(2) In any criminal proceedings taken by virtue of this section it shall be sufficient to allege that the property to which such proceedings relate is the property of the wife.

Wife's ante-nuptial debts, and liabilities.

14. A woman after her marriage shall continue to be liable for all debts contracted, and all 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 any laws 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:

Provided always that nothing in this Act shall operate to increase or diminish the liability of any woman married before the first day of January, 1887, for any such debt, contract or wrong, as aforesaid, except as to any property to which she may become entitled by virtue of this Act, and to which she would not have been entitled if this Act had not passed.

Acts of wife liable to criminal proceedings.

15. 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.

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

16. [Repealed by Act 4 of 2004, S. 25.]

17. [Repealed by Act 4 of 2004, S. 25.]

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 annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds of Great Britain or this Island, or of any other stocks or funds transferable as aforesaid, or any debentures issued under any enactment of this Island, 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*.

Married woman as an executrix or trustee.

19. 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 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.

Costs may be ordered to be paid out of property subject to restraint on anticipation.

20. In any action or proceeding from and after the twenty-first day of June, 1895, instituted by a woman or by a next friend on her behalf, the court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just.

Will of married woman.

21. Section 19 of the Wills Act, which provides that a will shall take effect as if it were executed immediately before the death of the testator, shall apply to the will of a married woman whether she is or is not possessed of, or entitled to, any property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

Married woman to be liable to the parish for the maintenance of her husband. 41/1975 2nd Sch.

22. Where the husband of any woman having property becomes chargeable to any parish, the Resident Magistrate having jurisdiction in such parish may, upon application of the Inspector 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 property as by the Maintenance Act the Resident Magistrate may make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any parish.

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

23. A married woman having 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:

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.

24. In section 22, any reference to a Resident Magistrate, in so far as it may relate—

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Court.
L.Nn.
149/78,
64/80

- (a) to a Resident Magistrate for the parish of Kingston or for the parish of Saint Andrew, shall, as respects any time on or after the 13th day of November, 1978, be construed as a reference to a Judge of the Family Court—Corporate Area Region; and
- (b) to a Resident Magistrate for a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, shall, with effect from the date on which any such Court is established, be construed as a reference to a Judge of that Family Court.