

## CHAPTER 144.

## MARRIED PERSONS (PROPERTY).

[No. XII of 1904.]

[20th August, 1904.]

Short title.

1. This Ordinance may be cited as the Married Persons (Property) Ordinance.

Interpretation.

2. In this Ordinance—

“contract” includes the acceptance of any trust, or the office of executrix or administratrix, and the provisions of this Ordinance as to liabilities of married women shall extend to all liabilities by reason of any breach of trust 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 those liabilities unless he has acted or intermeddled in the trust or administration;

“property” includes a right of action.

Ordinance not to affect rights acquired under marriages solemnised before its commencement.

3. The respective matrimonial rights of any husband and wife with regard to property arising under and by virtue of any marriage solemnised before the commencement of this Ordinance, and all rights which any other person has acquired or become entitled to under or by virtue of that marriage, (except where hereinafter otherwise expressly provided), shall be governed by the law which would have been applicable thereto if this Ordinance had not passed.

Rights of persons married after the commencement of this Ordinance as to movable property; as to immovable property.

4.—(1) The respective matrimonial rights of every husband and wife, domiciled or resident in the colony and married after the commencement of this Ordinance, in, to, or in respect of movable property, during the subsistence of the marriage and of that domicile or residence, shall be governed by the provisions of this Ordinance.

(2) The respective matrimonial rights of every husband and wife married after the commencement of this Ordinance, in, to, or in respect of any immovable property situate in the colony, during the marriage, shall be governed by the provisions of this Ordinance.

5. There shall be no community of goods between husband and wife married after the commencement of this Ordinance as a consequence of marriage, either in respect of movable or immovable property.

Community of goods not a consequence of marriage.

6.—(1) A married woman shall, in accordance with the provisions of this Ordinance, be capable of acquiring, holding, and disposing by will or otherwise, of any movable or immovable property as her separate property in the same manner as if she were unmarried.

Married woman to be capable of holding property and of contracting as if she were unmarried.

(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 in all respects, as if she were unmarried, 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 against her, and any damages or costs recovered by her in the action or proceeding shall be her separate property, and any damages or costs recovered against her in the action or proceeding shall be payable out of the separate property and not otherwise.

(3) Every contract hereafter entered into by a married woman, otherwise than as agent—

- (a) shall be deemed to be a contract entered into by her with respect to, and to bind, her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into the contract;
- (b) shall bind all separate property of or to which she is, at that time or thereafter, possessed or entitled; and
- (c) shall be enforceable also by process of law against all property of or to which she may thereafter, while discoverd, be possessed or entitled.

(4) 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 unmarried.

7. Every woman who marries after the commencement of this Ordinance shall be entitled to have and to hold, as her separate property, and to dispose of in manner aforesaid, all movable and immovable property belonging to her at the time of marriage, or acquired by or devolving upon her after marriage, including any wages, earnings,

Property of a woman married after the Ordinance to be held by her as if she were unmarried.

money and property gained or acquired by her in any employment, trade, or occupation in which she is engaged or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Loans by  
wife to  
husband or  
vice versa :

8.—(1) 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, unless secured by a conventional mortgage, shall be treated as assets of the husband's estate in case of his insolvency, but the wife's claim in respect thereof shall rank concurrently with the claims of all other unsecured creditors on his estate.

(2) The provisions of the last preceding sub-section shall apply mutatis mutandis with respect to any money or other estate of the husband lent or entrusted by him to his wife for the purpose of any trade or business carried on by her or otherwise :

Proviso.

Provided that nothing in this section shall affect the rights of any married woman in respect of her ante-nuptial contract under the provisions of the Insolvency Ordinance.

Chapter 180.

Execution of  
a general  
power.

9. The execution of a general power by will by a married man or woman shall have the effect of making the property appointed liable for his or her debts and other liabilities in the same manner as his or her separate estate is made liable under this Ordinance.

As to  
property  
to be trans-  
ferred to a  
married  
woman :

10. All deposits in any post office or other savings bank, or in any other bank, and all shares, stock, bonds, 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 shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of any married woman married after the commencement of this Ordinance shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which, so far as any liability is incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title thereto is created or certified, or in the books or register wherein her title is entered or recorded or not :

Proviso.

Provided that nothing in this Ordinance shall require or authorise any corporation or joint stock company to admit

any married woman to be a holder of any shares or stock therein to which any liability is incident, contrary to the provisions of any Ordinance, charter, by-law, articles of association, or deed of settlement regulating that corporation or company.

11. The provisions hereinbefore contained as to deposits in any post office or other savings bank or in any other bank, shares, stock, bonds, debentures, debenture stock or other interests of or in any corporation, company, public body, or society aforesaid respectively, which shall be allotted to or placed, registered, or transferred to or into, or made to stand in the sole name of a married woman, married after the commencement of this Ordinance, 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 standing in, or allotted to, placed, registered, or transferred to or into, or made to stand in the name of any married woman, married after the commencement of this Ordinance, jointly with any person or persons other than her husband.

Investments in joint names of married women and others.

12. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any deposit aforesaid, or of any share, stock, bond, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any corporation, company, public body, or society aforesaid, at any time hereafter standing in the sole name of any married woman married after the commencement of this Ordinance, or in the joint names of that married woman and any other person or persons not being her husband.

As to property standing in the joint names of a married woman and others.

13. If any investment in any deposit aforesaid, or in any share, stock, bond, 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, has been made by a married woman married after the commencement of this Ordinance, by means of moneys of her husband without his consent, the court may, upon an application under section twenty of this Ordinance, order the investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Ordinance contained shall

Fraudulent investments with money of husband.

Order and  
disposition.

give validity as against creditors of the husband to any gift by a husband to his wife of any property which, after the gift, continues 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 Ordinance had not passed.

Moneys  
payable  
under policy  
of assurance  
not to form  
part of the  
estate of the  
assured :

14.—(1) A married woman may, by virtue of the power of making contracts hereinbefore contained, effect a policy of assurance upon her own life or on the life of her husband for her separate use, and the policy and all benefit thereof shall enure accordingly.

(2) 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 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 the 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 :

Proviso.

Provided, that if it is 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.

(3) 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 thereunder.

(4) In default of the appointment of a trustee, the policy, immediately on its being effected, shall vest in the assured and his or her legal representatives in trust for the purposes aforesaid.

(5) If, at the time of the death of the assured, or at any time afterwards, there is no trustee, or it is 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 on application by any party interested.

(6) The receipt of a trustee or trustees duly appointed, or, in default of that appointment, or in default of notice to the insurance office, the receipt of the legal 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.

15.—(1) Every woman married after the commencement of this Ordinance 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, in the same manner as if she were unmarried, but except as aforesaid, no husband or wife shall be entitled to sue the other for tort.

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

(2) In any indictment or other proceeding under this section it shall be sufficient to allege the 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 Ordinance or rule of law to the contrary notwithstanding :

Provided that no criminal proceeding shall be taken by any wife against her husband by virtue of this Ordinance, while they are living together, as to or concerning any property claimed by her, or 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 that property has been wrongfully taken by the husband when leaving or deserting his wife, or about to leave or desert her.

Proviso.

(3) Every married woman, whether married before or after the commencement of this Ordinance, shall have the right to sue and may be sued in her own name for a divorce or judicial separation without the appointment of a next friend.

Proceedings for divorce.

16. A woman married after the commencement of this Ordinance shall, after her marriage, 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 marriage, including any sums for which she may be liable as a contributory, either

Wife's ante-nuptial debts and liabilities.

before or after she has been placed on the list of contributories under and by virtue of the Ordinances relating to joint stock companies, and she may be sued for those debts and for any liability in damages or otherwise under any contract, or in respect of those wrongs; 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 those debts, contracts, or wrongs.

Liability of husband for his wife's debts contracted before marriage to a certain extent :

17.—(1) Except as to proceedings commenced before the first day of December, nineteen hundred and twenty-five, the husband of a married woman shall not, as her husband, be liable to be sued or made a party to any action or legal proceeding brought or taken against her in respect of a tort committed by her, whether before or after the marriage.

(2) A husband married after the commencement of this Ordinance shall be liable for the debts of his wife contracted, and for all contracts entered into, (and, if only proceedings therefor were commenced before the first day of December, nineteen hundred and twenty-five, for all wrongs committed), by her before marriage, including any liabilities to which he or she may be subject under the Ordinances relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he has acquired or to which he has become entitled to from or through his wife, after deducting therefrom any payment made by him, and any sums for which judgement has been in good faith recovered against him in any proceeding at law in respect of those debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage; but he shall not be liable for them any further or otherwise; and any court in which a husband is sued for any of those debts shall have power to direct any inquiry or proceeding which it thinks proper for the purpose of ascertaining the nature, amount, or value of the property :

Proviso.

Provided that nothing in this Ordinance contained shall operate to increase or diminish the liability of any husband married before the commencement of this Ordinance for or in respect of any such debt or other liability of his wife as aforesaid.

18.—(1) A husband and wife married after the commencement of this Ordinance may be jointly sued in respect of any aforesaid debt or other liability by contract (or, subject as aforesaid for any wrong) contracted or incurred by the wife before marriage, if the plaintiff in the action seeks to establish his claim, either wholly or in part, against both of them.

Suits for ante-nuptial liabilities.

(2) If in that action, or in any action brought in respect of the 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 has become so entitled as aforesaid, he shall have judgement for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him.

(3) In the 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 judgement to the extent of the amount for which the husband is liable shall be joint against the husband personally and against the wife as to her separate property; and as to the residue (if any) of the debt and damages, the judgement shall be separate against the wife as to her separate property only.

19. A wife doing any act with respect to any property of her husband, which, if done by him with respect to her property would make him liable to criminal proceedings by her under this Ordinance, shall in like manner be liable to criminal proceedings by her husband.

Act of wife liable to criminal proceedings.

20. In any question between husband and wife as to the title to or possession of property, either party, or any bank, corporation, company, public body, or society, aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply in a summary way to a judge of the Supreme Court, and the judge may make any 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 the application to stand over from time to time, and any inquiry touching the matters in question to be made in any manner he thinks fit:

Questions between husband and wife as to property to be settled in a summary way:

Provided that—

(a) any order of a judge 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

Proviso.



judge in a suit pending in the Court would be subject; and

- (b) the judge, if either party so requires, may hear the application in chambers; and
- (c) the bank, corporation, company, public body, or society aforesaid, shall, in the matter of the application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married woman as an executrix or trustee.

**21.** 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 annuity or deposit aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, bond, debenture, debenture stock, or other benefit, right, claim, or other interest, of or in any corporation, company, public body, or society aforesaid, and may transport, or transfer, or join in transporting or transferring, any immovable property or mortgages thereof in that character without her husband as if she were unmarried.

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

**22.** Nothing in this Ordinance contained shall interfere with or affect any ante-nuptial contract or settlement, or agreement for an ante-nuptial contract or 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 any person under any ante-nuptial contract or settlement, or will or other instrument; but no restriction against anticipation contained in any ante-nuptial contract or settlement, or agreement for an ante-nuptial contract or settlement, of a person's own property to be made or entered into by that person, shall have any validity against debts contracted by that person before marriage.

Legal representative of married woman.

**23.** For the purposes of this Ordinance, the legal 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.