

CHAPTER 169.

MARRIED PERSONS (PROPERTY).

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CHAPTER 169.

MARRIED PERSONS (PROPERTY).

1929 Ed.
c. 144.
45 of 1952.

[20TH AUGUST, 1904.]

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

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

Interpre-
tation.

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.

Community of goods not a consequence of marriage.

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.

Loans by wife to husband or vice versa.

6. (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 subsection 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:

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.

Cap. 43.

7. 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 property, in respect of which, so far as any liability is incident thereto, she shall alone be liable:

As to property to be transferred to a married woman.
45 of 1952.

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.

8. 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.

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 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.

Fraudulent
investments
with money
of husband.

10. 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 15 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 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.

Order and
disposition.

Moneys
payable
under policy
of assurance
not to form
part of the
estate of the
assured.
45 of 1952.

11. (1) A married woman may effect a policy of assurance upon her own life or on the life of her husband for her own benefit, 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:

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.

12. (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 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. 45 of 1952.

(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.

(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.

13. A woman married after the commencement of this Ordinance shall, after her marriage, continue to be liable for all debts contracted, and all contracts entered into or wrongs com-

Wife's ante-nuptial debts and liabilities. 45 of 1952.

mitted by her before 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 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.

Act of wife
liable to
criminal
proceedings.

14. 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.

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

15. 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:

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 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.

16. 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.

17. 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.

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

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

Legal representative of married woman. 45 of 1952.