



ANNO QUADRAGESIMO SEXTO ET QUADRAGESIMO  
SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1883-4.

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No. 300.

An Act to amend the Law of Property and of Contract  
with respect to Married Women.

[Assented to, February 28th, 1884.]

**W**HEREAS it is expedient to amend the law of property and of contract with respect to married women—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

1. (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 to be capable of holding property and of contracting as a *feme sole*.

(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

*The Married Women's Property Act.—1883-4.*

(3.) 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.

(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 a *feme sole*.

Property of a woman married after the Act to be held by her as a *feme sole*.

2. 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.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband, or 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 him or her or otherwise, shall be treated as assets of the husband's or wife's estate in case of his or her insolvency: Provided that the wife or husband may claim a dividend as a creditor for the amount or value of such money or other estate, but unless a memorandum of such loan or transaction shall have been registered in the General Registry Office, at Adelaide (in a form to be settled by the Registrar-General), within fourteen days of such loan or transaction, all claims of the other creditors of the husband or wife for valuable consideration in money or money's worth shall first be satisfied.

Execution of general power.

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 Act.

Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

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

As to stock, &c., to which a married woman is entitled.

6. All deposits in any post office or any savings bank, or other bank, all funds and annuities granted by any Government or corporation, and all sums forming part of the inscribed stock of South Australia, or of the public stocks or funds of any Government or of any other

*The Married Women's Property Act.—1883-4.*

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 other, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in the name of any married woman, shall be deemed, unless and until the contrary be shown, to be her separate property; and the fact that the same 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 authorise 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 all Governments, corporations, officers, trustees, and other persons in respect of such transfer and receipts in respect thereof.

7. All sums forming part of any such stocks or funds, 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: Provided always that nothing in this Act 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 may be incident, contrary to the provisions of any Act of Parliament, charter, by-law, articles of association, or deed of settlement regulating such corporation or company.

As to stock, &c., to be transferred, &c., to a married woman.

8. All the provisions hereinbefore contained as to deposits, annuities, sums forming part of any public stocks or funds, or of any other stock or funds, or of any other 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 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 as 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.

Investments in joint names of married women and others.

9. It

*The Married Women's Property Act.—1883-4.*

As to stock, &c.,  
standing in the joint  
names of a married  
woman 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 such annuity or deposit as aforesaid, or any sum forming part of such public 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.

Fraudulent invest-  
ments with money of  
husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any public stocks or funds, 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 seventeen of this Act, 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.

Moneys payable  
under policy of assu-  
rance effected in a  
certain form not to  
be part of estate of  
the insured.

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

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 favor 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: Provided that, 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: Provided also that nothing herein contained shall affect the proviso of the thirty-third section of

*The Married Women's Property Act.—1883-4.*

of the "Life Assurance Companies Act," 277 of 1882. The insured 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 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 new trustees may be appointed by any Court having jurisdiction under the provisions of "The Trustee Act, 1855," or the Acts amending and extending the same. 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 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 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 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 and 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 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 such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife: Provided also, that in any civil proceedings the wife shall be subject to the like obligation to give or find security for costs as if the wife were a *feme sole*.

Married woman to have same civil and criminal redress as *feme sole*.

**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, 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

Married woman's liability for contracts and wrongs antece-

*The Married Women's Property Act.—1883-4.*

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; 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 Act 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.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

**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, 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: Provided always, that 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: Provided also that, after the passing of this Act, no husband shall be liable for debts contracted by his wife on the ground of the implied agency of the wife: Provided that in any case in which any judgment shall be obtained against any husband and wife in respect of any tort committed by the wife after marriage, the husband, if he shall satisfy such judgment or any part thereof, shall be entitled to the extent to which he shall satisfy such judgment to enforce such judgment against any separate estate of the wife, in such and the same manner as the plaintiff could have enforced such judgment against such separate estate if such judgment had been obtained against the wife alone.

Suits for ante-nuptial liabilities.

**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 Married Women's Property Act.—1883-4.*

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.

**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 Act, shall in like manner be liable to criminal proceedings by her husband.

Act of wife rendering her liable to criminal proceedings.

**17.** In any question between husband and wife as to the title to 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 Court of South Australia, or (at the option of the applicant irrespectively of the value of the property in dispute) to the Local Court of Full Jurisdiction nearest to which either party resides, and the Judge of the Supreme Court and the Local Court aforesaid may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as the said Judge or Court respectively may think fit, or may direct such application to stand over from time to time, and any inquiry touching the matter in question shall be made in such manner as such Judge or Court shall think fit: Provided always, that any order of a Judge of the Supreme Court 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 or in an equitable action or proceeding in the same Court would be; and any order of a Local Court of Full Jurisdiction under the provisions of this section shall be subject to appeal in the same way as a judgment of such Court for the same amount as the property in dispute would be, and the appeal shall be conducted in the manner provided by the "Local Court Act, 1861," with regard to appeals, and by any Acts extending or amending the same, *mutatis mutandis*, except that the appellant's bond shall be for Twenty Pounds only, and if the security be completed, and the appeal proceeded with in accordance with the provisions in that behalf, the proceedings shall be stayed: Provided that all proceedings of a Local Court of Full Jurisdiction under this section, where the property in question exceeds Four Hundred Pounds in value, may, at the option of the defendant or respondent in such proceedings, be removed as of right into the Supreme Court  
by

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

*The Married Women's Property Act.—1883-4.*

by writ of *certiorari* or otherwise in accordance with the "Local Courts Act, 1861," and any other Acts as aforesaid; but any order made, or act done, in the course of such proceedings prior to such removal shall be valid unless order be made to the contrary by such Supreme Court: Provided also that the Judge of the Supreme Court, or the Local Court of Full Jurisdiction, if either party so require, may hear any such application in a private room: Provided further that any such bank, corporation, company, public body, or society as aforesaid shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married woman as executrix or trustee.

**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 any public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or 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*.

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

**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 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 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.

Married woman liable for maintenance of relatives and husband.

**20.** Every married woman having separate property shall be subject to all such liability for the maintenance of her relatives in the ascending and descending lines, as is provided in the fifth section of "The Destitute Persons Act, 1881," as if she were a widow, and shall be as liable to contribute to the maintenance of her husband, if he be without adequate means of support, as by that Act a husband is liable to contribute to the maintenance of his wife, and the powers conferred by that Act, and any Acts extending or amending the same, upon Justices and upon the Destitute Board may be exercised for the enforcement of such liabilities of such married woman: Provided that nothing herein contained shall relieve any husband of any



*The Married Women's Property Act.—1883-4.*

any liability to contribute to the maintenance of any relative or person whom he is now by law bound to maintain.

**21.** For the purposes of this Act 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 if she were living: Provided that nothing herein contained shall take away the effect of any statute of limitations or of the rule that personal actions die with the person.

Legal representative  
of married woman.

**22.** The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to 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 inter-meddled in the trust or administration. The word "property" in this Act includes a thing in action.

Interpretation of  
terms.

**23.** The date of the commencement of this Act shall be the first day of January, one thousand eight hundred and eighty-four.

Commencement of  
Act.

**24.** This Act may be cited as the "Married Women's Property Act, 1883-4."

Short title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WILLIAM C. F. ROBINSON, Governor.