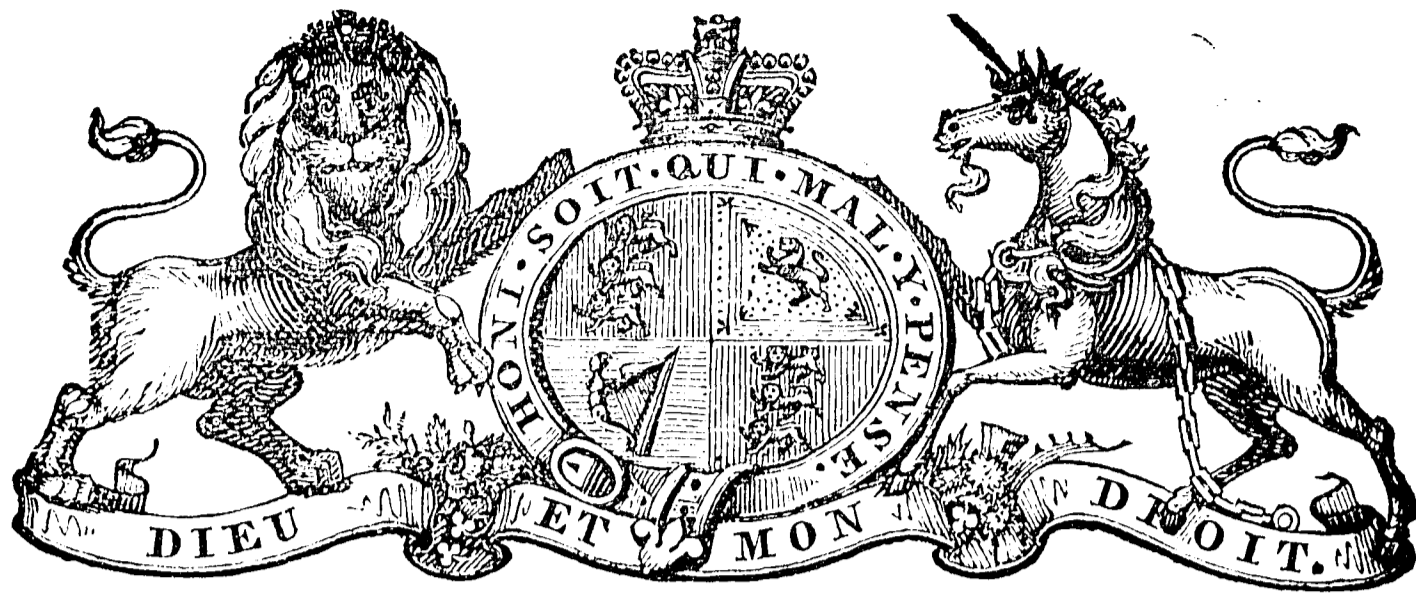


VICTORIA.



ANNO QUADRAGESIMO OCTAVO

VICTORIÆ REGINÆ.

No. DCCCXXVIII.

An Act to consolidate and amend the Acts relating to the Property of Married Women.

[12th December 1884.]

WHEREAS it is expedient to consolidate and amend the laws relating to the property of married women: Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as "*The Married Women's Property Act 1884*," and shall come into operation on the thirteenth day of December One thousand eight hundred and eighty-four. Short title.

2. In this Act the word "contract" 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, and the word "property" shall include a thing in action. Interpretation of terms.
45 & 46 Vict. c. 75
s. 24.

3. The Acts mentioned in the Schedule hereto to the extent to which the same are in and by the said Schedule expressed to be repealed shall be and the same are hereby repealed. Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force or any right or liability of any husband or wife married before the commencement of this Act to sue or be sued under the Repeal.
1b. s. 22.

Published as a Supplement to the 'Victoria Government Gazette' of Friday, 12th December 1884.

the provisions of the said repealed Acts or either of them for or in respect of any debt contract wrong or other matter or thing whatsoever for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

Married woman to be capable of holding property and of contracting as a *feme sole*.
45 & 46 Vict. c. 75
s. 1.

4. (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.

Contract liability suing.

(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 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.

(5.) Every married woman shall in respect of her separate property be subject to the insolvency law 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 *feme sole*.
Ib. s. 2.

5. 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 savings made by her and 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.
Ib. s. 3.

6. 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 shall be treated as assets of her husband's estate in
case

case of his insolvency, under reservation after proof of the *bona fides* of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate.

7. 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.

Execution of general power.
45 & 46 Vict. c. 75
s. 4.

8. 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 have accrued before or which shall accrue after the commencement of this Act, including any savings wages earnings money and property so gained or acquired by her as aforesaid.

Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.
Ib. s. 5.

9. All deposits in any post office or other savings bank or in any other bank, or with any joint-stock or incorporated company or registered or incorporated friendly or building society, and all parcels or amounts of Victorian Government stock, which at the commencement of this Act are standing in the sole name of a married woman, and all shares stocks 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; and the fact that any such deposit parcel or amount of Victorian Government Stock or any 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 the Postmaster-General the Treasurer and all directors managers and trustees of every such bank corporation company public body or society as aforesaid in respect thereof.

As to stock &c. to which a married woman is entitled.
Ib. s. 6.

10. All such deposits as are mentioned in the last preceding section, and all parcels or amounts of Victorian Government Stock 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

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

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 Parliament charter bye-law articles of association or deed of settlement regulating such corporation or company.

Investments in joint names of married women and others.
45 & 46 Vict. c. 75
s. 8.

11. All the provisions hereinbefore contained as to deposits in any post office or other savings bank or in any other bank, or with any joint stock or incorporated company or registered or incorporated friendly or building society parcels or amounts of Victorian Government Stock, 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 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.

As to stock &c. standing in the joint names of a married woman and others.
Ib. s. 9.

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 such deposit as aforesaid, or any parcel or amount of Victorian Government Stock, 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 persons or person not being her husband.

Fraudulent investments of money of husband and frauds upon creditors.
Ib. s. 10.

13. If any investment in any such deposit Victorian Government Stock, 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 twenty 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.

14. A

14. 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.

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 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. 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 "*Statute of Trusts 1864*" or any then subsisting statutory amendment or extension thereof. 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.

15. 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 or wife shall be competent to give evidence against each other any statute

Moneys payable under policy of assurance not to form part of estate of the insured.

45 & 46 Vict, c. 75
s. 11.

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

Ib. s. 12.

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.

Wife's ante-nuptial debts and liabilities. 45 & 46 Vict. c. 75 s. 13.

16. 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-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 and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent. *Ib.* s. 14.

17. 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.

18. A

18. 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 appear 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.

Suits for ante-nuptial liabilities. 45 & 46 Vict. c. 75 s. 15.

19. 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 liable to criminal proceedings. *Ib.* s. 16.

20. In any question between husband and wife as to the title to or possession of property either party or the Postmaster-General the Treasurer 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, or (at the option of the applicant irrespectively of the value of the property in dispute) to the judge of any county court, and the judge of the Supreme Court or of the county court (as the case may be) may make such 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 such 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. Provided always that the judge issuing such summons may therein order that in the meantime no dealing with the property in dispute shall be recognised by the Postmaster-General the Treasurer or any such bank corporation company public body or society, provided also 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 in the said court would be, and any order of a judge of a county court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be

Questions between husband and wife as to property to be decided in a summary way. *Ib.* s. 17.

be, and all proceedings in a county court under this section in which by reason of the value of the property in dispute such court would not have had jurisdiction if this Act or "*The Married Women's Property Act*," or "*The Married Women's Property Act Amendment Act 1882*" had not been passed, may at the option of the defendant or respondent to such proceedings be removed as of right into the Supreme Court by writ of certiorari or otherwise as may be prescribed by any rule of such court, but any order made or act done in the course of such proceedings prior to such removal shall be valid unless order shall be made to the contrary by the Supreme Court. Provided also that the judge of the Supreme Court or of the county court, if either party so require, may hear any such application in his private room. Provided also 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
an executrix or
trustee.

45 & 46 Vict. c. 75
s. 18.

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 such deposit as 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 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*.

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

Ib. s. 19.

22. 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.

Legal representative
of married woman.

Ib. s. 25.

23. 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 be if she were living.

24. Any

24. Any woman during her minority not being less than eighteen years may with the consent of her parent or guardian and of her intended husband make or enter into any settlement or agreement for a settlement in contemplation of marriage, and the settlement or agreement for a settlement so made or entered into shall be as binding upon her and those claiming under her as if she had been of full age at the date thereof.

Power to women during minority to make binding settlements.
No. 384 s. 19.

25. The estate real and personal as to which any married woman dies intestate after the commencement of this Act shall subject to the payment of the duties and fees payable under "*The Duties on the Estates of Deceased Persons Statute 1870*" or any subsisting statutory modification thereof and of her funeral administration or testamentary expenses and debts in the ordinary course of administration be distributable between her husband and her children or next of kin in the like manner and proportions in which the estate real and personal as to which a married man dies intestate is distributable between his widow and his children or next of kin.

Distribution of the estate of a married woman.

26. A married woman having separate property shall notwithstanding her husband be living be subject to the same liability under the one hundred and fiftieth section of the "*Lunacy Statute*" for the maintenance clothing medicine and care of each and every child of hers at present detained in any public or private establishment in Victoria for the reception of insane persons or in any asylum hospital or licensed house under the provisions of the said Act or hereafter received into and detained in any such asylum hospital or licensed house under the same provisions as she would be subject to if her husband had been dead, and she shall also be liable under the twenty-fourth and ancillary sections of "*The Neglected and Criminal Children's Act 1864*" to contribute to the support of each and every child of hers detained in any industrial or reformatory school: Provided always that nothing in this Act shall relieve her husband from any liability imposed upon him by the "*Lunacy Statute*" or "*The Neglected and Criminal Children's Act 1864*" in respect of each and every such child.

Married woman to be liable for maintenance of her lunatic children.
Ib. s. 21.

SCHEDULE.

Date of Act.	Short Title of Act.	Extent of Repeal.
34 Vict. No. 384 ...	" <i>Married Women's Property Act</i> " ...	The whole.
46 Vict. No. 736 ...	" <i>The Married Women's Property Act Amendment Act 1882</i> "	The whole.

MELBOURNE :

By Authority : JOHN FERRES, Government Printer.