

TASMANIA.

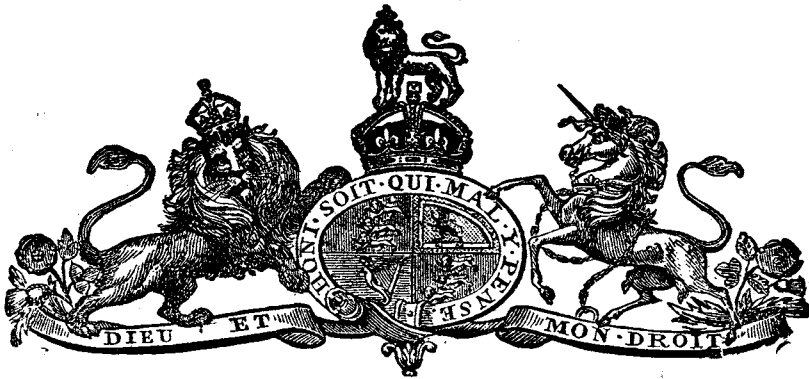
THE MARRIED WOMEN'S PROPERTY
ACT 1935.

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T A S M A N I A.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 90.

AN ACT to consolidate and amend the Acts relating to the Property of Married Women, and to remove certain Restrictions applying to Married Women in relation to their Property. [16 January, 1936.]

A.D.
1935.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as the *Married Women's Property Act* Short title. 1935.

2 The enactments enumerated in the schedule are hereby repealed. Repeal.

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Married woman
to be capable of
holding property
and of contracting
as a *feme sole*.

47 Vict. No. 18,
s. 1.

3—(1) A married woman shall be capable of acquiring, holding, and disposing of any real or personal property in the same manner in every respect as if she were a *feme sole*.

(2) A married woman shall be capable of entering into and rendering herself liable in respect of 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 any damages or costs recovered by her in any such action or proceeding shall be her property; and any damages or costs awarded against her in any such action or proceeding shall be recoverable from and payable by her in the same manner in every respect as if she were a *feme sole*.

(3) The marriage of a woman shall not affect any contract or liability entered into, or incurred, by her before marriage.

Fraudulent
investments with
money of
husband.

Ib., s. 10.

4—(1) If any investment in any Commonwealth or State securities or in any deposit in any bank, or in any share or debenture 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 this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband.

(2) Nothing in this Act 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.

Application of
moneys payable
under policy of
assurance in
certain cases.

Married woman
may effect
insurance.

Ib., s. 11.

5 A married woman may 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.

6—(1) A policy of assurance effected by a man or woman on his or her own life, and expressed to be for the benefit of the spouse or children, or of the spouse and children, or any of them, of the insured 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 part of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts.

(2) The insured may by the policy, or by written declaration of trust, appoint a trustee of the moneys payable under the policy, and may at any time appoint a new trustee thereof, and may make provision for the appointment of a new trustee, and for the investment of the moneys payable under any such policy.

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(3) In default of any such appointment, such policy, immediately on its being effected, shall vest in the insured and his personal representative, in trust for the purposes aforesaid. A.D. 1935.

(4) If, at any time after the death of the insured, there shall be no trustee, or it shall be expedient to appoint a new trustee, a trustee or new trustee may be appointed by the Court under the provisions of the *Trustee Act 1898*.

62 Vict. No. 34.

(5) The receipt of the trustee or, in default of any appointment, or in default of notice to the insurance office, the receipt of the personal representative of the insured shall be a discharge to the insurance company office for the sum secured by the policy, or for the value thereof, in whole or in part.

(6) If in any case it is proved that any such policy as aforesaid was effected and the premiums in respect thereof 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 whole of the premiums paid in respect of such policy.

(7) The provisions of this section shall not affect the operation of sections thirty-nine and forty of the *Life Assurance Companies Act 1874*. 38 Vict. No. 6.

7 Every married person shall have the same rights and remedies in respect of the property of such person against all persons including the spouse of such person as if such person were unmarried; but except as aforesaid no married person shall be entitled to sue the other party to the marriage as for a tort. Remedies of married persons. 47 Vict. No. 18, s. 12.

8—(1) In any question between husband and wife as to the title to or possession of property, either party, or any person in whose books any shares or interests of either party are standing, may apply by summons to a judge to determine such question. Questions between husband and wife as to property. *Ib.*, s. 17.

(2) Upon the hearing of such application the judge 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, and any inquiry touching the matters in question to be made in such manner as he shall think fit.

(3) The judge, if either party shall require, may hear any such application in chambers.

(4) Any such person as aforesaid shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

9—(1) If any question shall arise between a married woman and any judgment creditor of her husband, or the sheriff or any bailiff, trustee, liquidator, or other person acting on behalf of any creditor of her husband, in respect of the ownership of any property, it shall be lawful for such judgment creditor, sheriff, bailiff, trustee, liquidator, or other person, or for such married woman, to apply by summons to a judge to have such question determined. Questions between married woman and husband's creditors. 54 Vict. No. 14, ss. 2 to 4.

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(2) Upon the hearing of such application, the judge may make such order with respect to the property in dispute, and as to the costs of and incidental to the application, as he thinks fit, and may direct any inquiry touching the matters in question to be made in such manner as he thinks fit.

(3) In all cases where such application is determined in favour of the married woman, the costs payable to such married woman shall be costs as between solicitor and client.

Onus of proof to lie on married woman.

(4) On the hearing of any such application the onus of proof as to the ownership of any property in dispute shall rest upon the married woman in all cases where such property has, within two years before the date of the summons, come into her possession.

Judge may declare gift of property void.

(5) The judge on any such application may declare any gift or transfer of such property from a husband to a wife made within two years before the date of the summons in order to defeat or delay his creditors, or which has the effect of defeating or delaying his creditors, to be void.

Money spent within two years in improving wife's land.

54 Vict. No. 14, s. 5.

10—(1) Any such person as aforesaid may apply by summons to a judge in any case in which a husband has, within two years before the date of such summons, erected buildings upon or otherwise improved land of his wife, or has purchased land in her name, or provided money to purchase land in her name or on her behalf.

(2) The judge, upon hearing such summons, may fix the value of the land, if and so far as the same belongs to the wife independently of any such act as aforesaid by her husband and shall ascertain the value of the improvements or the amount expended or paid upon or for such land, and may order the wife to pay the amount so ascertained, or so much thereof as may suffice to satisfy the claim of the applicant.

(3) If the wife fails to comply with such order, the judge, by the same or a subsequent order, may direct the sheriff to sell such land, or a sufficient part thereof, and to transfer the same as if he were proceeding under a writ of *feri facias*, and out of the proceeds arising from such sale the amount so fixed by the judge as the value of the land belonging to the wife as aforesaid, shall be paid to the wife, and the amount so ascertained by the judge shall be retained by the sheriff for the person taking out the summons, and the balance shall be paid to the wife; and the costs of the proceedings shall be in the discretion of the judge.

(4) On any application under this section or section eight or section nine evidence may be given orally or by affidavit or in both such ways; and on any appeal the Court may allow further evidence to be adduced.

Contracts by married women.
64 Vict. No. 7,
s. 3.

11—(1) Every contract hereafter entered into by a married woman otherwise than as agent shall have the like effect as if she were unmarried.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of any such contract any separate property which at that time or thereafter she is restrained from anticipating.

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(3) In any action or proceeding instituted by a woman, the court before which such action or proceeding is pending shall have jurisdiction by judgment or order 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. A.D. 1935.

12 Every married woman shall hereafter be subject to all the provisions of the *Debtors Act* 1870 in respect of any debt, or instalment of any debt, due from her in pursuance of any order or judgment of any competent court. Married woman to be subject to the provisions of 34 Vict. No. 33.

13 The husband of a married woman shall not be liable for any tort committed by her which shall not be a sufficient cause of action against him alone. 64 Vict. No. 7, s. 6. Husband not to be liable for wife's torts.

14 Wherever a devise or bequest of any real or personal property shall be hereafter made to a man and his wife and another person jointly, in equal shares or without any direction as to the proportions in which such property shall be distributed among them, the husband and the wife shall take separate and equal shares in the same manner and to the same extent as if the relation of husband and wife did not exist between them. *Ib.*, s. 7. Construction of gifts to husband and wife and another person. *Ib.*, s. 8.

15—(1) A married woman who is appointed or becomes by construction or operation of law a trustee of any real property, with power to sell and convey, or otherwise transfer the same to any other person, may execute all necessary and proper deeds and instruments for conveying or otherwise transferring such real property to any other person in the same manner as if she were not married. Trusteeship of married woman not affected by marriage.

(2) This section shall have effect as from the twenty-ninth day of October, one thousand eight hundred and eighty-three.

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THE SCHEDULE.**REPEALS.**

Date and Number of Act.	Title of Act.
1 Wm. IV., c. 65	<i>The Infants Property Act 1833 (Imperial)</i>
4 Wm. IV., No. 12	<i>An Act for extending to Van Diemen's Land certain Statutes passed in England in the Ninth Year of His Late and the First Year of His Present Majesty for the amendment of the Law</i>
4 Wm. IV., No. 13	<i>An Act to render Conveyances by Married Women effectual without Fine or Recovery</i>
5 Vict. No. 11	<i>An Act to amend an Act to render Conveyances by Married Women effectual without Fine or Recovery</i>
21 Vict. No. 42	<i>An Act to enable Married Women to dispose of Reversionary Interests in Personal Estate</i>
47 Vict. No. 18	<i>The Married Women's Property Act</i>
49 Vict. No. 6	<i>An Act to amend the sixteenth section of the Married Women's Property Act</i>
54 Vict. No. 14	<i>The Married Women's Property Act 1890</i>
64 Vict. No. 7	<i>The Married Women's Property Act 1900</i>