

MARRIED WOMEN'S PROPERTY.

No. 61 of 1965.

AN ACT to amend the *Married Women's Property Act 1935.* [22 December 1965.]

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:—

Short title and citation.

1—(1) This Act may be cited as the *Married Women's Property Act 1965.*

(2) The *Married Women's Property Act 1935*, as subsequently amended, is in this Act referred to as the *Principal Act.*

2 After section one of the *Principal Act* the following section is inserted:—

Interpretation.

“1A In this Act, ‘commissioner’ means the commissioner of a court of requests under the *Local Courts Act 1896* (being a commissioner who is a practitioner as defined in that Act).”

Remedies of married persons.

3 Section seven of the *Principal Act* is amended by omitting therefrom all the words after the word “unmarried” to the end of the section.

4 After section seven of the *Principal Act* the following section is inserted:—

Actions in tort between husband and wife.
Cf. 10 & 11 Eliz. 2, c. 48 (Imp.), s. 1.

“7A—(1) Subject to this section, each of the parties to a marriage has the like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court or a judge may stay the action if it appears to the court or judge—

(a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or

(b) that the question or questions in issue could more conveniently be disposed of under section eight,

and, without prejudice to paragraph (b) of this subsection, the court or judge may, in such an action, exercise any power that could be exercised on an application under that section or give such directions as it or he thinks fit for the disposal under that section of any question arising in the proceedings.

“(3) Where an action to which this section relates is brought in a court of requests and the court stays the action, a party to the action who is dissatisfied with the decision of the court to stay the action may appeal from that decision to the Supreme Court, and that Court has jurisdiction to hear and determine the appeal.

“(4) The procedure on an appeal under subsection (3) of this section shall be in accordance with the Rules of Court relating to appeals from inferior courts (other than licensing courts).

“(5) Rules of court shall be made under the *Supreme Court Civil Procedure Act 1932* and the *Local Courts Act 1896* making provision for requiring a court or judge to consider at an early stage of proceedings in tort between the parties to a marriage whether the power to stay the action under subsection (2) of this section should or should not be exercised.

“(6) In this section, ‘court’ includes a court of requests held before a commissioner who is a practitioner (as defined in the *Local Courts Act 1896*).”.

5 Section eight of the Principal Act is amended—

- (a) by inserting in subsection (1) thereof, after the word “judge”, the words “or to a commissioner”;
- (b) by inserting in subsection (2) thereof, after the word “judge”, the words “or commissioner”;
- and
- (c) by inserting in subsection (3) thereof, after the word “judge”, the words “or commissioner”.

Questions between husband and wife as to property.

6 Section nine of the Principal Act is amended—

- (a) by inserting in subsection (1) thereof, after the word “judge”, the words “or to a commissioner”;
- (b) by inserting in subsection (2) thereof, after the word “judge”, the words “or commissioner”;
- and
- (c) by inserting in subsection (5) thereof, after the word “judge”, the words “or commissioner”.

Questions between married women and husband's creditors.

7 Section ten of the Principal Act is amended—

- (a) by inserting in subsection (1) thereof, after the word “judge”, the words “or to a commissioner”;
- (b) by inserting in subsection (2) thereof, after the word “judge”, the words “or commissioner”;
- (c) by inserting in subsection (3) thereof, after the word “judge” (wherever occurring), the words “or commissioner”;

Money spent within two years by husband improving wife's property.

- (d) by inserting in that subsection, after the word "Sheriff" (first occurring), the words "or, as the case requires, a bailiff of a court of requests";
- (e) by inserting in that subsection, after the words "*feri facias*", the words "or, as the case may be, a warrant of execution"; and
- (f) by inserting in that subsection, after the word "Sheriff" (second occurring), the words "or bailiff".

8 After section ten of the Principal Act the following section is inserted:—

"10A—(1) Where—

- (a) an action to which section seven or section seven A relates is brought in a court of requests the commissioner before whom that court is held; or
- (b) an application is made to a commissioner under section eight, or section nine, or section ten, the commissioner,

if he is of the opinion that any of the matters in question between the parties would be more properly dealt with by the Supreme Court, shall proceed no further with the hearing of the application and in such a case the action or application shall, by virtue of this section, be deemed to be removed to the Supreme Court, and all documents filed therein shall be transmitted by the registrar of the appropriate court of requests to the Registrar of the Supreme Court.

"(2) Where an action or application is removed to the Supreme Court under this section, that Court or a judge shall proceed as if the action had originally been commenced therein or the application had originally been made to a judge, and all subsequent proceedings shall be according to the course and practice of that Court."

9 The amendments of the Principal Act that are effected by this Act do not apply to or in relation to any cause of action that arose before the commencement of this Act.

Removal of matters from a court of requests to the Supreme Court.

Operation of amendments.