

Mr. Finn.

Married Women's Property.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Married woman to be capable of holding real estate as if she was a <i>femme sole</i>.</p> <p>3. Real property of women married after this Act to be held by them as if unmarried.</p> <p>4. Real property acquired after this Act by women married before the Act to be held by them as if unmarried.</p> <p>5. Earnings of married women to be deemed their own property.</p> <p>6. Deposits in savings banks by a married woman to be deemed her separate property.</p> <p>7. As to married women's property in companies.</p> <p>8. As to married women's property in a society.</p> <p>9. Deposit of money in fraud of creditors invalid.</p> <p>10. Personal property coming to a married woman to be her own.</p>	<p>11. Married women to be capable of disposing of and bequeathing personalty.</p> <p>12. How questions as to ownership of property to be settled.</p> <p>13. Married women may effect policy of insurance.</p> <p>14. As to insurance of a husband for benefit of his wife.</p> <p>15. Married woman may maintain an action.</p> <p>16. Husband not to be liable on his wife's contracts before marriage.</p> <p>17. Husband and wife to be sued together, when either contracts as agent for the other.</p> <p>18. Liability of married women.</p> <p>19. Power to women during minority to make binding settlements.</p> <p>20. Husband's liability to account for wife's, and wife's liability to account for husband's, personalty.</p> <p>21. Wife's liability to insolvency law.</p>
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A BILL INTITLED

AN ACT to amend the Law relating to the Property of Married Women.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Married Women's Property Act, 1879," and it shall come into operation on the _____ day of _____, one thousand eight hundred and eighty.

Nothing in this Act shall be deemed to affect any of the provisions of the Statute of 13 Elizabeth, cap. 5, and 27 Elizabeth, cap. 4, or to render valid any conveyance or transfer of property of any kind whatsoever which would be invalid under any law now or hereafter in force relating to bankruptcy.

2. A married woman shall be capable of holding, acquiring, alienating, demising, and devising real estate as if she were a *femme sole*.

3. Every woman who marries after this Act has come into operation shall, notwithstanding her coverture, hold all real estate whatever belonging to her before marriage, free from the debts and obligations of her husband, and from his control and disposition, in all respects as if she had continued unmarried.

4. Every woman married before this Act has come into operation shall, notwithstanding her coverture, hold all the real estate her right to which shall arise after this Act shall have come into operation, free from the debts and obligations of her husband, and from his control or disposition, in all respects as if she had continued unmarried; but

nothing herein contained shall exempt any such property from the operation of any settlement or covenant to which it would have been subject if this Act had not passed, or shall prejudice any right or interest to which her husband or any person claiming through him may be entitled at the date at which this Act comes into operation. 5

Earnings of married women to be deemed their own property.

5. The savings made by any married woman, acquired or gained by her after the coming into operation of this Act, in any employment, occupation, or trade in which she is engaged apart from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such savings, wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married; and her receipt alone shall be a good discharge for such savings, wages, earnings, money, and property. 10 15

Deposits in savings banks by a married woman to be deemed her separate property.

6. Notwithstanding any provision to the contrary in the Acts relating to saving banks and post office deposit for savings, any deposit hereafter made in the name of a married woman, or in the name of a woman who may marry after such deposit, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman: Provided that if any such deposit is made by a married woman by means of moneys of her husband, without his consent, a Judge of the Supreme Court or any District Court may, upon an application under section *twelve* of this Act, order such deposit or any part thereof to be paid to the husband. 20 25

As to married women's property in companies.

7. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint-stock company that any shares, or any debenture or debenture-stock, or any stock of such company and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman, as a married woman, entitled to her separate use; and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred, and the dividends and profits paid, as if she were an unmarried woman: Provided that if any such investment as last-mentioned is made by a married woman by means of moneys of her husband, without his consent, a Judge of the Supreme Court or any District Court may, upon an application under section *twelve* of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband. 30 35 40

As to married women's property in a society.

8. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the statutes relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in to or upon the funds of such society, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman, entitled to her separate use; and it shall be the duty of such committee or trustee to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable, with all dividends and profits thereon, as if she were an unmarried woman: Provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband, without his consent, a Judge of the Supreme Court or any District Court may, 45 50 55 60

upon an application under section *twelve* of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

9. Nothing hereinbefore contained in reference to real estate
5 acquired by a married woman, or to moneys deposited in savings banks
or with the Postmaster-General, or moneys invested in shares or stock
of any company, or any share, benefit, debenture, right, or claim in
any such society as hereinbefore mentioned, shall, as against creditors
10 of the husband, give validity to any acquisition of real estate or to any
deposit or investment of moneys of the husband made in fraud of such
creditors; and any moneys so deposited or invested may be followed as
if this Act had not been passed. A Judge of the Supreme Court or
any District Court may, if he consider it reasonable and proper so to
15 do, upon motion or summons in a summary way, upon the application
of any such creditor on an unsatisfied judgment, order that the moneys
so deposited or invested as aforesaid be transferred or paid to such
creditor to the extent of such unsatisfied judgment: Provided that
any order made by such Judge shall be subject to appeal, as the order
20 of the same Judge made in a pending suit or on an equitable plaint
would have been; and every such order shall be deemed to be a decree
or order of the Supreme Court or District Court respectively in its
equitable jurisdiction, and may be enforced in like manner, except
that the person of the wife shall not in any case be liable to be
attached.

Deposit of money
in fraud of creditors
invalid.

10. Where any woman shall during her marriage become entitled
to any personal property as next of kin, or one of the next of kin, of
an intestate, or under any deed or will, such property shall, subject
and without prejudice to the trusts of any settlement affecting the
same, belong to the woman for her separate use, and her receipt alone
30 shall be a good discharge for the same.

Personal property
coming to a married
woman to be her own.

11. Any married woman may dispose of and bequeath any personal
property belonging to her for her separate use, as if she were a
femme sole.

Married women to be
capable of disposing
of and bequeathing
personally.

12. In any question between husband and wife, or his or her
35 executors or administrators, as to property declared by this Act to be
the separate property of the wife, either party may apply by motion
or summons in a summary way, either to any Judge of the Supreme
Court or (irrespective of the value of the property) to the Judge of any
District Court, and thereupon the Judge may make such order, direct
40 such inquiry, and award such costs as he shall think fit: Provided
that any order made by such Judge shall be subject to appeal in the
same manner as the order of the same Judge made in a pending suit
or on an equitable plaint would have been; and the Judge may, if
either party so require, hear the application in his private room. Every
45 such order shall be deemed to be a decree or order of the Supreme
Court or District Court respectively in its equitable jurisdiction, and
may be enforced in like manner, except that the person of the wife
shall not in any case be liable to be attached.

How questions as
to the ownership of
property to be
settled.

13. A married woman may effect a policy of insurance upon her
50 own life or the life of her husband for her separate use, and the same
and all benefit thereof, if expressed on the face of it to be so effected,
shall enure accordingly, and the contract in such policy shall be valid
as if made with an unmarried woman.

Married women may
effect policy of
insurance.

14. A policy of insurance effected by any married man on his
55 own life, and expressed upon the face of it to be for the benefit of his
wife, or of his wife and children or any of them, shall enure and be
deemed a trust for the benefit of his wife for her separate use, and of
his children or any of them, according to the interest so expressed;
and shall not, so long as any object of the trust remains, be subject
60 to the control of the husband, or to his creditors, or form part of his

As to insurance of a
husband for benefit
of his wife.

estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by a Judge of the Supreme Court, or the Judge of any District Court, and the receipt of such trustee shall be a good discharge to the insurance office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid. 5

Married woman may maintain an action.

15. A married woman may maintain an action in her own name for the recovery of any savings, wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property; and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such savings, wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such savings, wages, earnings, money, chattels, and property were belonging to her as an unmarried woman; and in any information or other proceeding it shall be sufficient to allege such savings, wages, earnings, moneys, chattels, and property to be her property. 10 15 20

Husband not to be liable on his wife's contracts before marriage.

16. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before her marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts, as if she had continued unmarried. 25

Husband and wife to be sued together when either contracts as agent for the other.

17. If a wife shall contract a debt as the agent of her husband, she shall be liable to be sued for the same together with him, but, as between the husband and wife, she shall be deemed his surety, and shall be entitled, by means of and upon an application under section *twelve* of this Act, to the same remedy over against her husband for indemnity as in the ordinary case a surety has against the principal debtor; and if a husband shall contract a debt as the agent of his wife, he shall be liable to be sued for the same together with her, but, as between husband and wife, he shall be deemed her surety, and shall be entitled, by means of and upon an application under section *twelve* of this Act, to the same remedy over against her for indemnity as in the ordinary case a surety has against the principal debtor. 30 35 40

Liability of married women.

18. Every married woman having property for her separate use shall be considered a *femme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any loss she may incur as plaintiff or defendant; and no husband shall, by reason of the marriage, be liable in damages for any wrong committed by his wife. 45

Power to women during minority to make binding settlements.

19. Any woman during her minority 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. 50

Husband's liability to account for wife's, and wife's liability to account for husband's, personalty.

20. When a wife having real or personal estate has allowed her husband, or a husband having real or personal estate has allowed his wife, to receive the rents and profits or income thereof, the husband or the wife, as the case may be, shall not by force of such receipt be held liable to account for such rents, profits, or income, unless it shall 55

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appear that the same were received by him or her, as the case may be, without her or his knowledge or consent.

21. All married women having real or personal property of any kind within the provisions of this Act, shall be liable to be made insolvent, or shall be capable of becoming insolvent, under any law now or hereafter in force relating to insolvency, and shall be subject to all the provisions and entitled to the benefit thereby given: Provided that nothing herein contained shall make the wife liable for the debts of the husband, and that the discharge of the wife under any such law shall not in any way extend to the debts of the husband.

Wife's liability to insolvency law.