

THE MARRIED WOMEN'S PROPERTY PROTECTION ACT, 1880.

THIS consolidates the existing Statutes—No. 9, of 1860, and No. 37, of 1870.

The original Act was adopted from the Imperial Acts of 20 and 21 Vict., c. 85, and 21 and 22 Vict., c. 108, and its provisions were limited to the case of *desertion of a wife by her husband without reasonable cause*. In 1870 the Legislature of New Zealand extended the operation of the Act to the various cases mentioned in subsections 2 to 5 of clause 3 of the attached Bill. Some changes in the language have been rendered necessary where reference was made to *desertion*; we have inserted language embracing the other cases now provided for by law. See clauses 3, 15, and 16.

The Act of 1860 contains provisions enabling the Resident Magistrate or Justices *by whom an order is made* to discharge or vary it. This was the provision of the Imperial Act 20 and 21 Vict., c. 85 (Section 21), and, as will be seen, it restricts the power to discharge or vary an Order to the Magistrate or Court that made it. Inconvenience was soon felt, and after an adverse decision in *ex parte Sharpe*, in 1864 (10, Jur. N. S., pp. 10, 18), the 27 and 28 Vict., c. 44, was passed, which enables application to be made to any Magistrate acting in the place of the Magistrate who made the original order, and allowing a later Court to discharge or vary orders made by an earlier Court.

Clause 17, therefore, is suggested as a necessary amendment in order to obviate the inconveniences which led to the passing of the 27 and 28 Vict., c. 44, and which have already been felt in this colony.

In clause 20 certain words are inserted to make the meaning clear: "Alimony" is granted by the Supreme Court under "The Divorce and Matrimonial Causes Act, 1867;" but the term as used in "The Married Women's Property Protection Act, 1860," might convey an impression that alimony could be granted by the inferior Courts. Indeed, this clause is not really necessary, provision to the same effect being made by section 13 of "The Divorce and Matrimonial Causes Act, 1867." We have, however, preferred to let it remain and draw attention to the matter.

The existing Statutes are repealed, with the usual saving.

ALEXANDER J. JOHNSTON,

W. S. REID,

Commissioners.

Wellington, 27th May, 1880.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
7th July, 1880.

[Statutes Revision Commission.]

MARRIED WOMEN'S PROPERTY PROTECTION.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Cases in which a wife may apply to a Court for protection order.</p> <p>4. Court may grant wife an order of protection.</p> <p>5. Order to be entered with Clerk of Court.</p> <p>6. Husband may apply to Court for discharge of order.</p> <p>7. Penalty on husband or creditor holding property of wife after notice.</p> <p>8. Court may make orders as to custody of children under ten years of age.</p> <p>9. Maintenance of children may be ordered by Court.</p> <p>10. Time to be defined in order.</p> <p>11. Destitute Persons Act to apply.</p> <p>12. Provisions respecting property of wife to extend to property vested in her as executrix, &c.</p> <p>13. Order for protection of earnings, &c., of wife to be deemed valid.</p> | <p>14. Discharge, &c., of order not to prejudice debts, contracts, or acts of wife.</p> <p>15. Property of wife in remainder or reversion to be included in order.</p> <p>16. Order to state the time at which the events happened in respect of which order is made.</p> <p>17. Court for the time being at place where order originally made may discharge, vary, or reverse it, or make further order.</p> <p>18. Rights and liabilities of wife deserted and having obtained order of protection. Disposition of property protected in case order reversed or discharged.</p> <p>19. To be considered a <i>feme sole</i> for purposes of contract and suing.</p> <p>20. Where alimony ordered to be paid has not been paid, husband liable for necessaries.</p> <p>21. Indemnity for making payments under order afterwards reversed.</p> <p>22. Repeal of Acts. Saving. Schedule.</p> |
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AN Act to consolidate the Law for the Protection of the Property of Married Women in certain cases. Title.

- 1. The Short Title of this Act shall be "The Married Women's Property Protection Act, 1880." Short Title.
- 2. In this Act, if not inconsistent with the context,— Interpretation.
 - "Court" means a Resident Magistrate's Court or a Court of Petty Sessions :
 - "Property" includes money and real and personal estate of any kind.
- 3. A wife may at any time after the happening of any of the events hereinafter mentioned apply to a Court for an order to protect any property she may acquire by her own lawful industry, and property which she may become possessed of, after the happening of any such event, against her husband or his creditors or any person claiming under him, in any of the following cases :— Cases in which a wife may apply to a Court for protection order.
 - (1.) Where she is deserted by her husband without reasonable cause ; 1860, No. 9, sec. 2.
 - (2.) When she is subjected by her husband to cruelty without adultery ;
 - (3.) Where her husband is guilty of living in open adultery ;
 - (4.) Where her husband is guilty of habitual drunkenness ;
 - (5.) Where her husband habitually fails to provide a maintenance for his wife and children, without such failure being caused by sickness or other unavoidable cause. 1870, No. 37, sec. 2.
- 4. The Court, if satisfied of the facts in any such case, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property from her husband and all creditors and persons claiming under him. Court may grant wife an order of protection. 1860, No. 9, sec. 2.
- 5. Every such order shall, within ten days after the making thereof, be entered with the Clerk to the Court making the order. Order to be entered with Clerk of Court. Ib., sec. 2.

Husband may apply to Court for discharge of order.

1860, No. 9, sec. 2.

Penalty on husband or creditor holding property of wife after notice.

Ib., sec. 2.

Court may make orders as to custody of children under ten years of age.

1870, No. 37, sec. 3.

Maintenance of children may be ordered by Court.

Ib., sec. 4.

Time to be defined in order.

Ib., sec. 5.

Destitute Persons Act to apply.

Ib., sec. 6.

Provisions respecting property of wife to extend to property vested in her as executrix, &c.

1860, No. 9, sec. 3.

Order for protection of earnings, &c., of wife to be deemed valid.

Ib., sec. 4.

Discharge, &c., of order not to prejudice debts, contracts, or acts of wife.

Ib., sec. 4.

Property of wife in remainder or reversion to be included in order.

Ib., sec. 4.

Order to state the time at which the events happened in respect of which order is made.

Ib., sec. 5.

Court for the time being at place where order originally made may discharge, vary, or reverse it, or make further order.

Rights and liabilities of wife deserted and having obtained order of protection.

6. The husband and any creditor or other person claiming under him may apply to the Court to discharge, vary, or reverse any order so made.

7. If the husband or any creditor of or person claiming under the husband shall seize or continue to hold any property of the wife after notice of the order, he shall be liable at the suit of the wife (which she is hereby empowered to bring) to restore the specific property, and also to pay a sum equal to double the value of the property so seized or held after such notice as aforesaid.

8. The Court, in any case in which the wife may desire the same, may, by the same or by any separate order, direct that the wife shall have the exclusive custody of any infant child or children of the marriage until such child or children, if male, shall attain the age of ten years, and if female the age of eighteen years or marriage.

9. The Court may, either at the time of making any such order as aforesaid at any time thereafter, on the application of the wife, and upon proof by the wife that her separate earnings are insufficient for the maintenance of the children then lawfully in her custody, make an order that the husband shall pay to the wife towards the support of such of the children as shall be under the age of ten years such weekly sum of money not exceeding one pound per week for each such child as such Court thinks fit.

10. The Court shall in such order define the day or time on and from which such order shall take effect.

11. All the provisions of "*The Destitute Persons Act, 1877*," relating to the enforcement of orders for the payment of moneys for the support of deserted children shall extend and apply to the orders made under the provisions of the *ninth* section of this Act.

12. The provisions of this Act shall be deemed to extend to property to which the wife has become or shall become entitled as executrix, administratrix, or trustee; since the date of the event in respect of which an order of protection has been granted; and the death of the testator or intestate shall be deemed to be the time when the wife became entitled as executrix or administratrix.

13. The order shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual.

14. No discharge, variation, or reversal thereof shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the making of the order and of the discharge, variation, or reversal thereof.

15. Property of or to which the wife is possessed or entitled for an estate in remainder or reversion *at the date of the event in respect of which the order is made* shall be deemed to be included in the protection given by it.

16. Every order shall state *as nearly as may be the date at which the event happened in consequence whereof the same is made*; and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to the time when such *event happened*.

17. *The Court sitting at any place where an order was originally made under any of the Acts hereby repealed or under this Act shall have jurisdiction to discharge, vary, or reverse an order for protection made as aforesaid, or to make any other order authorized under this Act, although such Court may not be composed of the person or persons originally making any such order.*

18. The wife shall, during the continuance of the order, be considered during such desertion as a *feme sole* with respect to property of every description

which she may acquire, or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*; and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead. 1860, No. 9, sec. 6.

But if the order shall be reversed or discharged, and the wife shall again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband before such renewed cohabitation. Disposition of property protected in case order reversed or discharged. *Ib.*, sec. 6.

19. In every case in which a wife has obtained such order as aforesaid she shall, until the same shall be reversed or discharged, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings. To be considered a *feme sole* for purposes of contract and suing. *Ib.*, sec. 7.

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 costs she may incur as plaintiff or defendant during such period.

20. Where alimony has been ordered to be paid to the wife *under any Act regulating the procedure in divorce and matrimonial causes*, and if the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use; but nothing shall prevent the wife from joining at any time in the exercise of any joint power given to herself and her husband. Where alimony ordered to be paid has not been paid, husband liable for necessaries. *Ib.*, sec. 7.

21. All persons and corporations who shall, in reliance on any order, make any payment to or permit any transfer or act to be made or done by the wife who has obtained the same shall, notwithstanding the order may then have been discharged, reversed, or varied, be protected and indemnified in the same way in all respects as if, at the time of such payment, transfer, or other act, the order were valid and still subsisting without variation in full force and effect, unless at the time of such payment, transfer, or other act such persons or corporations had notice of the discharge, reversal, or variation of the order. Indemnity for making payments under order afterwards reversed. *Ib.*, sec. 8.

22. The Acts mentioned in the Schedule hereto are hereby repealed.

Repeal of Acts.

But all acts done, proceedings taken, and orders made under the said repealed Acts, and subsisting at the time of the passing hereof, shall have the same effect as if done, taken, or made under this Act. Saving.

SCHEDULE.

Schedule.

1860, No. 9.—The Married Women's Property Protection Act, 1860.

1870, No. 37.—The Married Women's Property Protection Act, 1870.