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c 209 Married Women's Property Act

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CHAPTER 209.

The Married Women's Property Act.

INTERPRETATION.

1. In this Act,—

- "Contract." (a) "Contract" shall include the acceptance of any trust or the office of executrix or administratrix;
- "Property." (b) "Property" shall include a thing in action. R.S.O. 1927, c. 182, s. 1.

PROPERTY RIGHTS AND LIABILITIES OF MARRIED WOMEN.

Capacity for holding property as *feme sole*.

2.—(1) A married woman shall 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 a trustee.

Right of married woman to hold real and personal property.

(2) Every woman married on or after the 1st day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all real and personal property belonging to her at the time of marriage.

Right of married woman to wages, etc.

(3) Every married woman shall have and hold as her separate property, and may dispose of as such, the 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 and in which her husband has no proprietary interest, or gained or acquired by her by the exercise of any literary, artistic or scientific skill. R.S.O. 1927, c. 182, s. 2.

Power to contract and to sue and be sued.

3.—(1) 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. R.S.O. 1927, c. 182, s. 3.

(2) An action shall not lie against a husband for any tort committed by his wife before or after marriage nor shall he be joined in any action against his wife to recover damages for any tort committed by her. 1931, c. 33, s. 2.

Husband not responsible for wife's torts.

(3) A husband shall not be liable for the debts of his wife incurred by her before marriage and shall not be liable on any contracts entered into by his wife before marriage. 1937, c. 40, s. 2.

Husband not liable for debts contracted by wife before marriage.

4.—(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent,—

Married women's contracts after 13 April, 1897.

(a) shall be deemed to be a contract entered into by her with respect to and bind her separate property whether she was or was not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

(b) shall bind all separate property which she may at the time or thereafter possess or be entitled to; and

(c) shall also be enforceable by process of law against all property which she may thereafter while discover possess or be entitled to.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which such married woman is restrained from anticipating. R.S.O. 1927, c. 182, s. 4.

Restraint on anticipation.
56-57 V., (Imp.), c. 63, s. 1.

5. 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, and such property may be seized and sold under an execution against her personal representative after her separate property has been exhausted. R.S.O. 1927, c. 182, s. 5.

Execution of general power.

6. Notwithstanding that a married woman is restrained from anticipation the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. R.S.O. 1927, c. 182, s. 6.

Power of court to bind interest.
Imp. Act. 44-45 V., c. 41, s. 39

Remedies for
protection
of separate
property.

Torts as
between
husband
and wife

7. Every married woman shall have in her own name against all persons whomsoever, including her husband, the same remedies 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. R.S.O. 1927, c. 182, s. 7.

Wife's
anti-nuptial
debts, con-
tracts and
torts.

8. 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, 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. R.S.O. 1927, c. 182, s. 8; 1937, c. 40, s. 3.

Legal repre-
sentative of
married
woman.

9. 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 have had or been subject to if she were living. R.S.O. 1927, c. 182, s. 10.

Saving of
settlements,
and
restraints
against
anticipation.

10. Nothing in this Act 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. R.S.O. 1927, c. 182, s. 11.

Liabilities.

11. The provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman who is 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 intermeddled in the trust or administration. R.S.O. 1927, c. 182, s. 12.

SUMMARY TRIAL OF QUESTIONS OF PROPERTY BETWEEN
HUSBAND AND WIFE.

12.—(1) In any question between husband and wife as to the title to or possession of property, either party, or any corporation, company, public body or society in whose books any stocks, fund or shares of either party are standing may apply in a summary way to a judge of the Supreme Court or at the option of the applicant irrespective of the value of the property in dispute, to the judge of the county or district court of the county or district in which either party resides, and 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 from time to time, and any inquiry or issue touching the matters in question to be made or tried in such manner as he shall think fit.

Summary disposal of questions between husband and wife as to property.

(2) All proceedings in a county or district court under this section, in which by reason of the character or value of the property in dispute, such court would not have had jurisdiction if this Act had not been passed, may at the option of the defendant or respondent be removed as of right into the Supreme Court, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Supreme Court.

Removal of proceedings from county court into Supreme Court.

(3) The judge, if either party so requests, may hear any such application in private.

Hearing.

(4) Any such corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only.

Corporation's costs.

(5) An appeal shall lie to the Court of Appeal from any order made under this section where the value of the property in dispute exceeds \$200. R.S.O. 1927, c. 182, s. 13.

Appeal.

ORDER OF PROTECTION.

13.—(1) Any married woman,—

- (a) having a judgment for alimony; or
- (b) who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or
- (c) whose husband is a mentally incompetent person either with or without lucid intervals; or

Order of protection for the earnings of minor children.

- (d) whose husband is undergoing sentence of imprisonment in the provincial penitentiary or in any gaol for a criminal offence; or
- (e) whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in Ontario; or
- (g) who is deserted or abandoned by her husband;

Purport and effect of such order.

may obtain an order of protection entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried. R.S.O. 1927, c. 182, s. 14 (1); 1937, c. 72, s. 30.

Discharge of order

(2) The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection, and if an order for such discharge is made the same may be registered or filed in the same manner as the original order.

By whom to be made in cities and towns

(3) Either order may issue in duplicate, and where the married woman resides in a city or town in which there is a magistrate the order of protection or any order discharging the same shall be made by the magistrate and shall be registered in the registry office of the registry division in which the city or town is situate.

Registration

By whom order made elsewhere

(4) Where the married woman does not reside in a city or town in which there is a magistrate the order shall be made by the judge or one of the judges or the acting or deputy judge of the division courts or a division court of the county or district in which the married woman resides, and instead of being registered shall be filed for public inspection with the clerk of the division court of the division within which the married woman resides.

Hearing.

(5) The hearing of an application for an order of protection or for an order discharging the same may be public or private at the discretion of the judge or magistrate.

Order not to have effect until registered or filed.

(6) The order for protection shall have no effect until it is registered or filed, and the registrar or clerk shall immediately on receiving the order endorse thereon the day of registering or filing the same.

(7) The order discharging an order of protection shall not be retroactive. Operation of
order dis-
charging.

(8) The order of protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. R.S.O. 1927, c. 182, s. 14 (2-8). From what
time order
of protection
to take effect.

(NOTE.—*For provisions as to contracts of married women prior to 13th May, 1897, and as to the rights and liabilities of married women prior to that date see R.S.O. 1914, chapter 149. These provisions are neither consolidated nor repealed.*)
