

1914

c 149 Married Women's Property Act

Ontario

© Queen's Printer for Ontario, 1914

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Married Women's Property Act, RSO 1914, c 149

Repository Citation

Ontario (1914) "c 149 Married Women's Property Act," *Ontario: Revised Statutes*: Vol. 1914: Iss. 1, Article 152.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1914/iss1/152>

This Statutes is brought to you for free and open access by the Statutes at Osgoode Digital Commons. It has been accepted for inclusion in Ontario: Revised Statutes by an authorized administrator of Osgoode Digital Commons.

CHAPTER 149.

An Act respecting the Property of Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Married Women's Property Act*. 3-4 Geo. V. c. 29, s. 1. Short title.

2. In this Act,

Interpretation.

(a) "Contract" shall include the acceptance of any trust or of the office of executrix or administratrix; "Contract."

(b) "Property" shall include a thing in action. 3-4 Geo. V. c. 29, s. 2. "Property."

3. 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. 3-4 Geo. V. c. 29, s. 3. Liabilities.

4.—(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. Capacity of holding property as a feme sole.

(2) 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. Power to contract and to sue and be sued.

(3) A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly Married woman as an executrix, administratrix or trustee.

of property subject to any trust, may sue or be sued without her husband as if she were a *feme sole*.

[See *The Married Women's Conveyances Act, Rev. Stat. c. 150, s. 4 (1).*]

Construc-
tion of
contracts
prior to
13th April,
1897.

(4) Every contract entered into by a married woman, prior to the 13th day of April, 1897, shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary is shown.

To what
extent
binding.

(5) Every contract entered into by a married woman prior to the said 13th day of April, 1897, with respect to and to bind her separate property shall bind, not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she has since acquired or may hereafter acquire. 3-4 Geo. V. c. 29, s. 4.

Contracts
or after
13th April,
1897.

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

Whether
possessed or
not of prop-
erty when
contract
entered into.

(a) shall be deemed to be a contract entered into by her with respect to and to 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;

To what
extent
binding.

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

Remedies.

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

Except
where re-
straint on
anticipation
exists. 56-
57 V. (Imp.)
c. 63, s. 1.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which she is restrained from anticipating. 3-4 Geo. V. c. 29, s. 5.

Rights of
a woman
married on
or before
4th May,
1859.

6.—(1) Every woman married on or before the 4th day of May, 1859, without any marriage contract or settlement shall and may, from and after that day, notwithstanding her coverture, have, hold and enjoy all her real estate not on or before such day taken possession of by her husband by himself or his tenants, and all her personal property not on or before such day reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after marriage, free from his debts and obligations contracted after such day, and from his control or disposition without her consent in as full and ample a manner as if she were sole and unmarried.

(2) Every woman married between the 5th day of May, 1859, and the 2nd day of March, 1872, both inclusive, without any marriage contract or settlement shall and may, notwithstanding her coverture, have, hold and enjoy all her real property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried. Rights of a woman married between 4th May, 1859, and 2nd March, 1872, as to realty.

(3) This section shall not extend to any property received by a married woman from her husband during coverture. Exception.

(4) The real estate of any woman married after the 2nd day of March, 1872, whether owned by her at the time of her marriage or acquired by her in any way after marriage, and the rents, issues and profits thereof respectively, shall, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any estate therein of her husband during her lifetime, and from his debts and obligations, and from any claim or estate by him, as tenant by the curtesy; and her receipt alone shall be a discharge for any rents, issues and profits of the same; but nothing herein contained shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of *inter vivos* or by will. Rights of a woman married after 2nd March, 1872, as to realty. Curtesy.

(5) Every woman married since the 4th day of May, 1859, without any marriage contract or settlement shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried; but this subsection shall not extend to any property received by a married woman from her husband during coverture. 3-4 Geo. V. c. 29, s. 6. Rights of a woman married since 4th May, 1859, as to personalty. Proviso.

7.—(1) Every married woman, whether married before or after the passing of this Act, 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. Earnings of married women.

(2) Every woman married on or after the first day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all other real and personal property belonging to her at the time of marriage or acquired by or devolving upon her after marriage. 3-4 Geo. V. c. 29, s. 7. Rights of a woman married on or after 1st July, 1884.

Property acquired after 1st July, 1884, by a woman married before that date.

8. Every woman married before the first day of July, 1884, shall be entitled to have and hold and to dispose of in manner aforesaid as her separate property all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue on or after the said first day of July, including any wages, earnings, money and property so gained or acquired by her as aforesaid. 3-4 Geo. V. c. 29, s. 8.

Execution of general power.

9. 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. 3-4 Geo. V. c. 29, s. 9.

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

10. 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. 3-4 Geo. V. c. 29, s. 10.

As to stock, etc., to which a married woman is entitled.

11. All deposits, all sums forming part of public stocks or funds, which on the first day of July, 1884, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building or loan society which, on the first day of July, 1884, were standing in her name shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, sum forming part of public stocks or funds or of any share, stock, debenture, debenture stock or other interest as aforesaid is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive or transfer the same and to receive the dividends, interest, and profits thereof without the concurrence of her husband, and to indemnify all public officers, and all directors, managers and trustees of every such corporation, company, public body or society as aforesaid in respect thereof. 3-4 Geo. V. c. 29, s. 11.

As to stock, etc., transferred, etc., to a married woman.

12.—(1) All such particulars mentioned in the next preceding section which after the first day of July, 1884, were placed or transferred in or into, or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not.

(2) Nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any share or stock therein to which any liability may be incident contrary to the provisions of any statute, charter, by-law, articles of association or deed of settlement regulating such corporation or company. 3-4 Geo. V. c. 39, s. 12.

Subject to statutory or other provisions.

13. All the provisions hereinbefore contained as to such particulars mentioned in section 11 which on the first day of July, 1884, were standing in the sole name of a married woman, or which after that time have been or shall be placed or transferred to or into or made to stand in the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman, to any of the particulars aforesaid which were standing in or which shall be placed or transferred to or into or made to stand in the name of any married woman jointly with any person or persons other than her husband. 3-4 Geo. V. c. 29, s. 13.

Investments in joint names of married women and others.

14. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such particulars named in section 11 which shall be standing in the sole name of any married woman, or in the name of such married woman jointly with any person not being her husband. 3-4 Geo. V. c. 29, s. 14.

When husband's concurrence dispensed with.

15.—(1) If any investment in any of the particulars set forth in section 11 shall have been made by a married woman by means of money of her husband, without his consent, the Court may, upon an application under section 20 of this Act, order such investment and the dividends thereof, or any part thereof, to be respectively transferred and paid to the husband.

Investments with money of 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 in fraud of his creditors, or to any deposit or other investment of money of the husband made by or in the name of his wife in fraud of his creditors; but any property or money so deposited or invested may be followed as if this Act had not been passed. 3-4 Geo. V. c. 29, s. 15.

Rights of creditors preserved.

16. Every woman, whether married before or after this Act, 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. 3-4 Geo. V. c. 29, s. 16.

Remedies of married women for protection and security of separate property. Torts as between husband and wife.

Wife's ante-nuptial debts, contracts and torts.

17.—(1) 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; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs and for all damages or costs recovered in respect thereof.

Saving.

(2) Nothing in this Act shall operate to increase or diminish the liability of any woman married before the first day of July, 1884, for any such debt, contract or wrong. 3-4 Geo. V. c. 29, s. 17.

Liability of husband.

18.—(1) A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, and for wrongs committed by her after marriage, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any such debts, contracts or wrongs, for or in respect of which his wife is liable; but he shall not be liable for the same any further or otherwise.

Court may direct inquiry.

(2) The court in which a husband is sued for any such debt or liability may direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property.

Saving.

(3) Nothing in this Act shall operate to increase or diminish the liability of any husband married before the first day of July, 1884, for or in respect of any such debt or other liability of his wife. 3-4 Geo. V. c. 29, s. 18.

Parties to actions.

19.—(1) A husband and wife may be jointly sued in respect of any such debt or other liability, whether for contract or for any wrong contracted or incurred by the wife if the plaintiff in the action seeks to establish his claim either wholly or in part against both of them.

Husband's costs.

(2) If in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled he shall have judgment for his costs of defence whatever may be the result of the action against the wife if sued jointly with him.

(3) In any such action against husband and wife jointly if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages the judgment shall be a separate judgment against the wife as to her separate property only. 3-4 Geo. V. c. 29, s. 19.

What judgment may be entered.

20.—(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, funds 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, irrespectively 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) An order of a Judge of the Supreme Court, made under this section, shall be subject to appeal in the same way as an order made by the same Judge in an action in the said Court.

Appeal from Judge of Supreme Court.

(3) An order of a County or District Court, under this section, shall be subject to appeal in the same manner as any other order made by the same Court.

Appeal from County Court.

(4) 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

(5) The Judge of the Supreme Court or County or District Court, if either party so request, may hear any such application in his private room.

Hearing.

(6) 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. 3-4 Geo. V. c. 29, s. 20.

Corporation's costs.

Saving of
settlements,
and
restraints
against
anticipation.

21. 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. 3-4 Geo. V. c. 29, s. 21.

When married
woman may
obtain an
order of
protection
for the earn-
ings of her
minor
children.

22.—(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 lunatic either with or without lucid intervals; or
- (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.

How and by
whom an
order dis-
charging,
protection
may be
obtained.

(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.

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

By whom to be made in cities and towns.

(4) Where the married woman does not reside in a city or town in which there is a Police 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.

By whom order made elsewhere.

(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 Police Magistrate.

Hearing.

(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.

Order not to have effect until registered or filed.

(7) The order discharging an order of protection shall not be retroactive.

Operation of order discharging.

(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. 3-4 Geo. V. c. 29, s. 22.

From what time order of protection to take effect.

23. 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. 3-4 Geo. V. c. 29, s. 23.

Legal representative of married woman.

24. This Act shall not be construed to deprive a woman, married prior to the commencement of *The Married Women's Property Act, 1884*, of any right or privilege which she had at the time of the commencement of that Act or would afterwards have had if that Act had not been passed. 3-4 Geo. V. c. 29, s. 24.

Married women's rights prior to 1st July, 1884, not affected.