

CHAPTER 68

MARRIED WOMEN'S PROPERTY

Ordinance No. 18 of 1923.* AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO THE PROPERTY OF MARRIED WOMEN.

[1st July. 1924.]

Short title. **1.** This Ordinance may be cited as the Married Women's Property Ordinance.*

Interpretation. **2.** In this Ordinance, unless the context otherwise requires—

"contract " includes the acceptance of any trust or of the office of executrix or administratrix, and the provisions of this Ordinance as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being 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 -

"immovable property" includes land, incorporeal hereditaments and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except that of a mortgagee;

"movable property " means property of every description, except immovable property, and includes a thing in action.

3. (1) Whenever a woman marries, after the commencement of this Ordinance, a man of different race or nationality from her own, she shall, subject to the provisions of section 3 of the Jaffna Matrimonial Rights and Inheritance Ordinance, and of the Kandyan Marriage and Divorce Act, be taken to be of the same race or nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again.

(2) Save as aforesaid, this Ordinance shall not apply to Kandyans, Muslims, or Tamils of the Northern Province who are or may become subject to the Tesawalamai.

(3) This Ordinance shall not, during the subsistence of such marriages, apply to women married in community of property prior to the 29th day of June, 1877.

4. Sections 4 to 19 (both inclusive) of the Matrimonial Rights and Inheritance Ordinance are hereby repealed in so far as they relate to persons married on or after the 29th day of June, 1877 :

Provided, however, that such repeal shall not affect any act done or right or status acquired while such sections were in force, or any right or liability of any husband or wife, married before the commencement of this Ordinance, to sue or be sued under the provisions -of the said repealed sections, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability

On inter-marriage of persons of different races, or nationalities, laws to which husband subject to prevail; Ordinance not otherwise to apply to Kandyans, Muslims, or Tamils under the Tesawatamai. or persons married in community.

Repeal of sections 4 to 19 of the Matrimonial Rights and Inheritance Ordinance.

* See also section 24 (2) of the Judicature Act.

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shall have accrued to or against such husband or wife before the commencement of this Ordinance.

(4) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the insolvency laws in the same way as if she were a feme-sole.

Married woman to be capable of holding property and of contracting as if unmarried.

5. (I) A married woman shall, in accordance with the provisions of this Ordinance, be capable of acquiring, holding, and disposing by will or otherwise of any movable or immovable property as her separate property, in the same manner as if she were a feme-sole, without the intervention of any trustee.

6. Any will made by a married woman during the subsistence of her marriage shall, whether she is or is not possessed of or entitled to any separate property at the time of making it, be construed, as regards the property contained therein, to speak and take effect as if it had been executed immediately before her death:

(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; nor shall he be liable, merely on the ground that he is her husband, in respect of any tort committed by 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.

Provided, however, that there shall appear nothing in the will showing a contrary intention.

(3) Every contract hereafter entered into by a married woman otherwise than as agent—

7. Every woman who marries after the commencement of this Ordinance shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all movable and immovable property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any 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 separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

Property of a woman married after the Ordinance to be held by her as a feme-sole.

- (a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;
- (b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and
- (c) shall also be enforceable by process of law against all property which she may thereafter while discovered be possessed of or entitled to.

8. Any money or other property of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his insolvency, under reservation of the wife's claim to a dividend -s a creditor for the amount or value of such money or other property after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Loans by wife to husband.

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 in the same manner as her separate estate is made liable under this Ordinance.

Execution of will by a married woman shall have the general power.

Property acquired after the Ordinance by a woman married before the Ordinance to be held by her as if unmarried.

10. (1) Every woman married before the commencement of this Ordinance shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all movable and immovable property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Ordinance, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

(2) If any woman married before the commencement of this Ordinance shall, with the written consent of her husband, dispose by sale of any immovable property to which she may have become entitled before the commencement of this Ordinance, the proceeds of any such sale shall, whether the same are retained in the form of money or otherwise, remain the property of such woman, but subject always to the same trusts as affected the immovable property from the sale of which such proceeds are derived.

Sums secured by mortgages executed before commencement of Ordinance in favour of married women.

11. (1) All sums secured in favour of a married woman by any mortgage deed executed before the commencement of this Ordinance shall be deemed, unless or until the contrary be shown, to be the separate property of such married woman, and any such mortgage deed shall be sufficient prima facie evidence that she is beneficially entitled to the amount thereby expended to be secured in her favour for her separate use, so as to authorize and empower her to receive or otherwise deal with the same, and to receive the interest and profits thereof, without the concurrence of her husband, and to indemnify any person liable to pay the sum secured by any such mortgage as aforesaid, in respect thereof.

(2) The provisions of this section shall apply to the right, title, and interest of any such married woman in respect of any sums secured by any such mortgage to which she is a party jointly with any person or persons, whomsoever.

(3) If any investment in any such mortgage shall have been made by a married woman by means of moneys of her husband, without his consent, the court

may, upon an application under section 23 of this Ordinance, order such investment and the interest thereon or any part thereof, to be transferred and paid respectively to the husband.

12. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by any person, and all sums forming part of the public stocks or funds, which at the commencement of this Ordinance are 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 at the commencement of this Ordinance are 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, annuity, sum forming part of the public stocks or funds, 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 the Postmaster-General, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to deposit in bank, public stocks, &c., to which a married woman is entitled.

13. All sums forming part of the public stocks or funds, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Ordinance shall be allotted to, or placed, registered, 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

As to deposit in bank, public stocks, Ac., to be transferred, &c., to a married woman.

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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:

Provided always that nothing in this Ordinance shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of the Parliament of the United Kingdom, enactment, Charter, by-law, articles of association, or deed of settlement regulating such corporation or company.

Investments in joint names of a married woman and others.

14. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities, sums forming part of the public stocks or funds, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Ordinance shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, 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 right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Ordinance, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, 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.

As to stock, Ac., standing in the joint names of a married woman and others.

15. 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 annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint

names of such married woman and any other person or persons not being her husband.

16. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section 23 of this Ordinance, order such investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Ordinance contained shall give validity us against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any money so deposited or invested may be followed as if this Ordinance had not been passed.

Fraudulent investments with money of husband.

17. (1) A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy of insurance upon her own life or the life of her husband for her separate use; and the same and all benefit, thereof shall enure accordingly.

Moneys payable under policy of insurance.

(2) A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts :

Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid ;

Provided further that, notwithstanding anything herein contained, any money received under any such policy shall be subject to the payment of estate duties under the Estate Duty Ordinance or the Estate Duty Act, upon the whole amount of such money where such policy is wholly kept up by the husband or wife, as the case may be, or upon a part of such amount in proportion to the amount of the premiums paid by him or her, where the policy is partially kept up by such husband or wife as aforesaid.

(3) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy.

(4) In default of any such appointment of a trustee, such policy immediately on its being effected, shall vest in the insured and his or her executor or administrator, in trust for the purposes aforesaid.

(5) If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trusts Ordinance, or any enactment amending and extending the same.

(6) The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the executor or administrator of the insured shall be a

discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

18. (1) Every woman, whether married before or after this Ordinance, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, 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.

Remedies of a married woman for protection and security of separate property.

(2) In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property.

(3) In any proceeding under this section a husband or wife shall be competent and, except when he or she is the accused, compellable to give evidence against each other, any enactment or rule of law to the contrary notwithstanding.

(4) Provided always that no criminal proceedings shall be taken by any wife against her husband by virtue of this Ordinance while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

19. 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, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the enactments relating to joint stock companies; * and she may be sued for any

Wife's ante-nuptial debts and liabilities.

* Repealed by the Companies Ordinance — itself repealed by Act No. 17 of 1982. See also section 364(1) of the Companies Ordinance.-

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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:

Provided always that nothing in this Ordinance shall operate to increase or diminish the liability of any woman married before the commencement of this Ordinance for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Ordinance, and to which she would not have been entitled for her separate use under the sections hereby repealed or otherwise, if this Ordinance had not been passed.

Limit of husband's liability for his wife's debts or liabilities contracted before marriage.

20. 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, including any liabilities to which she may be so subject under the enactments relating to Joint stock companies* as aforesaid, 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 proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid ; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to ascertain or to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property;

Provided always that nothing in this Ordinance contained shall operate to

* Repealed by the Companies Ordinance itself repealed by Act No. 17 of 1982. See also section 364 (1) of the Companies Ordinance.

increase or diminish the liability of any husband married before the commencement of this Ordinance for or in respect of any such debt or other liability of his wife as aforesaid.

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

Suits for antenuptial liabilities.

(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 as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued 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.

22. (1) A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Ordinance, shall in like manner be liable to criminal proceedings by her husband.

When wife is liable to criminal proceedings in respect of act done with respect to husband's property.

(2) In any proceeding under this section, a husband and wife shall be competent, and, except when he or she is the accused, compellable, to give evidence against each other, any enactment or rule of law to the contrary notwithstanding.

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Questions between husband and wife as to property to be decided in a summary way.

23. (1) In any question between husband and wife as to the title or possession of property, either party, or any such bank, corporation, company, public body, or society, as aforesaid, in whose books any stocks, funds, or shares of either party may be standing, may apply by petition in a summary way as provided for in Chapter XXIV of the Civil Procedure Code, to the Family Court of the district in which either party resides.

(2) The Judge of the Family Court may make such order, direct or make such inquiry, and award such costs as he shall think fit.

(3) The Judge of the Family Court may, if either party so require, hear the application in his private room.

(4) Any order so made shall be subject to appeal to the Court of Appeal, and for the purposes of such appeal shall be regarded as an interlocutory order of the Family Court.

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

(6) Every such petition shall bear a stamp of ten rupees and no more.

Married woman as trustee, executrix, or administratrix.

24. A married woman who is a trustee solely or jointly with any other person or persons of property subject to any trust, or who is an executrix or administratrix solely or jointly as aforesaid of the estate of any deceased person, may sue or be sued, and may, without her husband, dispose of or join in disposing of any movable or immovable property held by her as such trustee, executrix, or administratrix, as if she were a feme-sole.

25. Nothing in this Ordinance contained 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.

Saving of existing settlements, and the power to make future settlements.

26. When a married woman having sufficient separate property neglects or refuses to maintain her husband, who through illness or otherwise is unable to maintain himself, the Judge of the Family Court* within whose jurisdiction such woman resides may, upon application of the husband, make and enforce such order against her for the maintenance of her husband out of such separate property as by section 2 of the Maintenance Ordinance, he may now make and enforce against a husband for the maintenance of his wife.

Married woman to be liable for the maintenance of her husband.

27. A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children:

A married woman with separate property liable for the maintenance of her children.

Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

28. For the purposes of this Ordinance the executor or administrator 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 be if she were living.

Liability of executor or administrator of married woman.

29. From and after the commencement of this Ordinance the benefit of the Senatus Consultum Velleianum, the benefit of the Authentica si qua Mulier, and of the Article 6 of the Placaat or Edict of the Emperor Charles V dated the 4th day of October, 1540, relating to marriage settlements shall not apply or have any force whatsoever in Sri Lanka.

Abrogation of certain laws.

* Subsequently vested in the Magistrate's Court by the Judicature (Amendment Act), No. 71 of 1981.