

CHAPTER 219

MARRIED WOMEN

1896-5

This Act came into operation on 22nd October, 1896.

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1950-51

1958-55

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1956-56

1961-54

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Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1978

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 219

MARRIED WOMEN 1896-5

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**BARBADOS****MARRIED WOMEN
1896-5**

An Act to consolidate the Acts of this Island relating to married women.

[Commencement: 22nd October, 1896]

Short title

1. This Act may be cited as the Married Women Act.

PART I**PROTECTION OF MARRIED WOMEN DURING DESERTION****Persons deserting their wives or children may be imprisoned**

- 2.(1) Where any person deserts and leaves his wife or any child whom such person is bound by law to maintain so that such wife or child becomes destitute, it shall be lawful for the magistrate of the district in which such wife or child may be residing, on the information of the Interim Commissioner for Local Government, to issue his warrant to apprehend and bring before him such person so charged.

(2) On proof being made of such charge the magistrate may commit such person to prison for two months.

(3) No person who has been proceeded against and punished under this section shall be considered as absolved in future from liability to maintain such wife or child or from being again punished under this section for a similar desertion of such wife or child.

Wife deserted by her husband may apply to magistrate for protection

3.(1) Every wife deserted by her husband may at any time after such desertion apply to the magistrate of the district in which such wife resides for an order to protect any money or property she may acquire by her own lawful industry and property which she may become possessed of after such desertion against her husband or his creditors or any person claiming under him.

(2) Such magistrate, if satisfied of the fact of such desertion and that the same was without reasonable cause and that the wife is maintaining herself by her own industry and property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*.

(3) Every such order shall immediately be entered in the order book of his office, a copy of which order under the hand of such magistrate shall be furnished such wife within four days of his making the same.

Seizing wife's property after notice of order

4. Where the husband or any creditor of, or person claiming under, the husband seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, on complaint of the wife (which she is hereby empowered to make) before any magistrate, to restore the specific property or the value thereof, and also for a sum equal to double the value of the property so seized or held after such notice, to be recovered in a summary manner.

Wife during continuance of order to be deemed *feme sole*

5. Where any such order of protection is made, the wife shall during the continuance thereof be and be deemed to have been during such desertion of her in the like position in all respects with regard to property and contracts and suing and being sued as if she were a *feme sole*.

Discharge of order

6. If shall be lawful for the husband and any creditor or other person claiming under him to apply to the magistrate of the district where such order was made for the discharge thereof, and such magistrate shall have power and authority to entertain such application and if he sees sufficient cause, he shall discharge the order.

Costs

7. On the hearing of any application for the discharge of such order, it shall be lawful for the magistrate to award such costs as he may now be authorised to award in summary cases.

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

8.(1) In every case in which a wife under this Act obtains an order to protect her earnings or property, such order shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who deals with the wife, be deemed valid and effectual, and no discharge, variation or reversal of such order 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 such order and of the discharge, variation or reversal thereof.

(2) Property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion shall be deemed to be included in the protection given by the order.

Order to state the time at which the desertion commenced

9. Every order obtained by a wife under this Act for the protection of her earnings or property shall state the time at which the desertion in consequence whereof the order is made commenced, and the order shall as regards all persons dealing with such wife in reliance thereon be conclusive as to the time when such desertion commenced.

Indemnity to persons making payments under orders afterwards reversed

10. All persons and corporations who, in reliance on any such 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 such order may then have been discharged, reversed or varied or at some time since the making of the order been discontinued, be protected and indemnified in the same way in all respects as if, at the time of such payment, transfer or other act, such 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 such order.

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

11. The provisions contained in this Act respecting the property of a wife who has obtained an order for protection shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee, as the case may be, and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

PART II
PROPERTY OF MARRIED WOMEN

Interpretation of Part II

12.(1) For the purposes of Parts II and III, the expression “contract” includes the acceptance of any trust or of the office of executrix or administratrix.

(2) For the purposes of this Part, the expression “property” includes a thing in action; and the provisions 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.

Married woman to be capable of acquiring, holding and disposing of property and of contracting as a *feme sole*

13. A married woman shall, in accordance with this Act, 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 any trustee.

Legal proceedings by and against married woman

14.(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 proceedings brought by or taken against her.

(2) Any damages or costs recovered by her in any such action or proceedings shall be her separate property, and any damages or costs recovered against her

in any such action or proceedings shall be payable out of her separate property and not otherwise.

Effect of contracts by married women

15.(1) Every contract entered into by a married woman otherwise than as agent—

- (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 discovert be possessed of or entitled to.

(2) Nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

Costs may be ordered to be paid out of property subject to restraint on anticipation

16. In any action or proceeding instituted by a woman or by a next friend on her behalf, the court before which such action or proceeding is pending shall have jurisdiction by judgment or order, from time to time, to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just.

Property of a married woman to be held by her as a *feme sole*

17. Every married woman shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal

property which belongs to her at the time of marriage or is acquired by or devolves 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.

Loans by wife to husband

18. Any money or other estate 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 bankruptcy under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate 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.

Execution of a general power

19. 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 Act.

Will of married woman

20. Section 73 of the *Succession Act*, Cap. 249 shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

[1975-46]

Transfer of stocks and shares, etc., to a married woman

21.(1) All sums forming part of the stocks or funds transferable in the books of any bank, and all deposits in any savings bank or other bank and all annuities granted by any person, and all shares, stock, debenture, debenture stock or other

interest 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 are 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 alone be liable, whether the same is 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 authorise 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 any Act, bye-law, articles of association or deed of settlement regulating such corporation or company.

Investments in joint names of a married woman and any person other than her husband

22. All the provisions of section 21 as to deposits in any savings bank or in any other bank, annuities granted by any person, sums forming part of the stocks or funds transferable in the books of any bank, shares, stock, debentures, debenture stock or other interests of or in any such corporation, company, public body or society respectively, which are 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 estate, right, title or interests of the married woman, to any of the particulars aforesaid which are standing in, or allotted to, placed, registered or transferred to or into or made to stand in the name of any married woman jointly with any persons or person other than her husband.

Husband need not join in transfer of any stocks and shares, etc.

23. 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 or any sum forming part of the stocks or funds transferable, 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 is mentioned in section 21, which is 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.

Fraudulent investments of money of husband

24.(1) Where any investment in any such deposit or annuity, or in any of the stocks or funds transferable as mentioned in section 21, 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 is made by a married woman by means of moneys of her husband, without his consent, the court may upon application order such investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband.

(2) Nothing in this Act contained shall give validity as against creditors of the husband to any gift by a husband to his wife of any property which, after such gift, continues 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 moneys so deposited or invested may be followed as if this Act had not been passed.

Life insurance policies

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

(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 where it is 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.

(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 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 legal personal representatives in trust for the purpose aforesaid.

(5) Where, at the time of the death of the insured or at any time afterwards, there is no trustee or it is expedient to appoint a new trustee, a trustee or a new trustee may be appointed by any court having jurisdiction to appoint trustees.

(6) The receipt of a trustee duly appointed or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative 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.

Remedies of married women for protection and security of separate property

26.(1) Every woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies and also, subject to subsection (4), the same remedies and redress, by way of criminal proceeding, 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.

- (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 to give evidence against each other, any statute or rule of law to the contrary notwithstanding.
- (4) No criminal proceeding shall be taken by any wife against her husband by virtue of this Act 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 are living together concerning property claimed by the wife, unless such property was wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife.

Wife's ante-nuptial debts and liabilities

27.(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, 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 any Act providing for the incorporation, management and winding-up of trading companies and other associations, 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.

(2) 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.

Husband to be liable for wife's debts contracted before marriage, to a limited extent

28.(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,

including any liabilities to which she may be so subject under any Act providing for the incorporation, management and winding-up of trading companies and other associations, to the extent of all property whatsoever belonging to his wife which he has acquired or become entitled to, from or through his wife, after deducting therefrom any payments made by him and any sum 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 but he shall not be liable for the same any further or otherwise.

(2) Any court in which a husband is sued for any such debt shall have power to direct any enquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property.

Proceedings against husband and wife jointly in respect of such debts or liabilities

29.(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 is mentioned in section 21, if the plaintiff in the action seeks to establish his claim, either wholly or in part against both of them.

(2) Where 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 has become so entitled as aforesaid, he shall have judgment for the costs of defence, whatever may be the result of the action against the wife if jointly sued with him.

(3) Where in any such action against husband and wife jointly, 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.

Liability of wife to criminal proceedings

30. 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 Act, shall, in like manner, be liable to criminal proceedings by her husband, and in any criminal proceedings against a husband or a wife as is authorised by this Act the husband and wife respectively shall be competent and admissible witnesses and, except when defendant, compellable to give evidence.

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

31.(1) In any question between husband and wife as to the title to or possession of property, either party or any such bank, corporation, company, public body or society as is mentioned in section 21, in whose books any stocks, funds or shares of either party are standing may apply by summons or otherwise in a summary way to a Judge.

(2) 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 enquiry touching the matters in question to be made in such manner as he thinks fit.

[1961-54]

(3) Any order of a Judge made under this section shall be subject to appeal to the Court of Appeal.

[1967/168]

(4) The Judge, if either party so requires, may hear any such application in chambers.

(5) Notwithstanding anything in this section, any such bank, corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs and otherwise, be treated as a stake-holder only.

Dispositions of trust estates by married women

32.(1) It shall be lawful for a married woman, without the concurrence of her husband, to dispose of or join in disposing of real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*.

(2) This section shall render valid and confirm all such dispositions made after the 20th March, 1885, but, where any title or right has been acquired through or with the concurrence of the husband before the 26th February, 1926, that title or right shall prevail over any title or right which would otherwise be rendered valid by this section.

Married woman as an executrix or trustee

33. 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 as aforesaid of property subject to any trust may sue or be sued and may transfer or join in transferring any such annuity or deposit as is mentioned in section 21 or any sum forming part of the stocks or funds transferable as mentioned in section 21, 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 in the character therein mentioned, without her husband, as if she were a *feme sole*.

Settlements of a married woman's separate property

34.(1) Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made before or after marriage respecting the property of any married woman or shall interfere with or render inoperative any restriction against anticipation 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, 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.

(2) Notwithstanding subsection (1), a settlement or agreement for a settlement made after the 26th February, 1926, by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married shall not be valid unless it is executed by her after she attains full age; but if she dies an infant, any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if this section had not been passed.

PART III MISCELLANEOUS

Married woman to be liable for the maintenance of her husband, her children and grand-children

35.(1) Where relief is given under any Act relating to the relief of the poor to the husband of any woman having separate property, the cost of such relief is hereby declared to be a loan from the Interim Commissioner for Local Government in exercise of his functions for the area in which the same was given and shall be recoverable from such woman as if she were a *feme sole* by the same actions and proceedings as in the case of money lent.

(2) A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren:

Provided always that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Rights of legal personal representatives of married women

36. 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 and be subject to if she were living.