

MARRIED WOMEN'S PROPERTY ORDINANCE, 1912.⁽¹⁾

No. 32 of 1912.

An Ordinance to amend the Law relating to the Property and Contracts of Married Women.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Married Women's Property Ordinance, 1912.*⁽³⁾ Short title.

It shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.*⁽¹⁾ Commencement.

2. Nothing in this Ordinance shall—

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| <p>(1) require or authorize any corporation or joint-stock company to admit any married woman to be a holder of shares 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; nor</p> | <p>Reservations.
Company not required to admit married woman as shareholder contrary to constitution.
Q. 54 Vic. No. 9, s. 2.</p> |
| <p>(2) give validity as against creditors of a husband to any gift by the husband to his wife of any property which after such gift shall continue to be in the order or 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 Ordinance had not been passed; nor</p> | <p>Rights of creditors against fraudulent gifts.
Q. 7b. s. 2.</p> |
| <p>(3) increase or diminish the liability of any woman married before the commencement of this Ordinance for any debts contracted contracts entered into or wrongs com-</p> | <p>Liability of women already married not affected except in respect of property acquired under Ordinance.
Q. 7b. s. 2.</p> |

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	7.5.1913 (Papua Govt. Gaz. of 7.5.1913)

(a) No notice of non-disallowance has been published in Papua Govt. Gaz.

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mitted by her before her marriage 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 if this Ordinance had not been passed; nor

Liabilities of husband already married not affected.

Q. 54 Vic. No. 9, s. 2.

Certain settlements not affected.

Q. 1b. s. 2.

- (4) operate to increase or diminish the liability of any husband married before the commencement of this Ordinance for or in respect of the debts of his wife contracted or contracts entered into or wrongs committed by her before marriage; nor
- (5) 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 interfere with or render inoperative any restriction against anticipation at present attached or hereafter to be attached to the enjoyment of any property or income by a woman under any settlement agreement for a settlement will or other instrument; but so that no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property 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; nor
- (6) relieve a husband from any liability imposed upon him by law to maintain the children of his wife.

Husband's liability to maintain children.

Married woman may acquire and dispose of property.

Q. 1b. s. 3, as amended by Q. 61 Vic. No. 6, s. 4.

May contract debts sue and be sued.

3.—(1.) 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 real or personal property as her separate property in the same manner as if she were unmarried without the intervention of any trustee.

(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 or⁽²⁾ any contract and of suing and being sued either in contract or in tort or otherwise in all respects as if she were unmarried 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.

(2) The word "or" appeared in the original Ordinance. *Semble*, "on" was intended.

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(3.) Every married woman shall in respect of her separate property be subject to the insolvency laws in the same way as if she were unmarried. Insolvency.

4. Every contract hereafter entered into by a married woman otherwise than as agent— Effect of contracts by married women.

- (1) 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;
- (2) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and
- (3) shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to:

Provided that 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.

5. 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 real and personal 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 if unmarried.
Q. 54 Vic.
No. 9, s. 4.

6. 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 insolvency 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. Debts due to wife by husband on his insolvency.
Q. Ib. s. 5.

7. The execution of a general power of appointment 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 a general power.
Q. Ib. s. 6.

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

Q. 54 Vic.
No. 9, s. 7.

8. 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 real and personal 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.

Investments now made in name of married women.

Q. Ib. s. 8.

9. All investments which at the commencement of this Ordinance are standing in the sole name of a married woman shall be deemed unless and until the contrary be shown to be the separate property of such married woman; and the fact that the same are standing in the sole name of a married woman shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive sell mortgage charge transfer or otherwise deal with the same and to receive the dividends rents issues profits and income thereof without the concurrence of her husband and to indemnify all persons acting upon or under any such receipt sale mortgage charge transfer or other dealing in respect thereof.

Investments hereafter vested in married woman.

Q. Ib. s. 9.

10. All investments 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 alone shall 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.

Investments in joint names of married women and others.

Q. Ib. s. 10.

11. All the provisions hereinbefore contained as to investments 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 or 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 interest of the married woman to any investments 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 persons or person other than her husband.

Husband need not join in transfer.

Q. Ib. s. 11.

12. It shall not be necessary for the husband of any married woman in respect of her interest to join in the transfer of or other dealing with any investment which is now or shall at any time hereafter be standing in the sole name of any married woman or in the name of such married woman jointly with any persons or per-

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son other than her husband whether for her own benefit or as executrix or administratrix or as a trustee.

13. A married woman who is an executrix or administratrix alone or jointly with any persons or person other than her husband of the estate of any deceased person or a trustee alone or jointly as aforesaid of any investments or property subject to any trust shall and may in that character without her husband have and exercise all rights and execute and perform all powers and functions and be subject to all liabilities as if she were unmarried.

Married woman
as an executrix
or trustee.
Q. 54 Vic.
No. 9, s. 12.

14. If any investments shall have been acquired by a married woman by means of moneys of her husband without his consent the court may upon an application under the provisions of this Ordinance order such investment and the dividends or income thereof or any part thereof to be transferred and paid to the husband.

Investments
with money of
husband.
Q. 7b. s. 13.

15.—(1.) A married woman may effect a policy of life assurance upon her own life or the life of her husband or any life wherein she has an insurable interest or enter into a contract for future endowments by way of annuity or otherwise for her separate use and the same and all benefits thereof shall ensure⁽³⁾ accordingly: Provided that the protection of the *Life Policies Protection Ordinance, 1912*, or any other Ordinance for the time being relating to the protection of life insurance policies shall extend to any such policy *bonâ fide* effected by a married woman upon her own life.

Moneys payable
under policy of
assurance not
to form part of
estate of the
the insured.
Q. 7b. s. 14.

(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 is proved that the policy was effected and the premiums were 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 with simple interest thereon at the rate of six per centum per annum.

(3.) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys

(3) The word "ensure" appeared in the original Ordinance. It has now been omitted and the word "enure" inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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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 the 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 purposes aforesaid.

(5.) If 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 or new trustees a trustee or trustees or a new trustee or new trustees may be appointed by the Central Court.⁽⁴⁾

(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 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.
Q. 54 Vic.
No. 9, s. 15.

16. 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 for the protection and security of her own separate property as if such property belonged to her as an unmarried woman; but except as aforesaid no husband or wife shall be entitled to sue the other for a wrong:

Provided always that no criminal proceeding shall be taken on the complaint of a 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.

Wife's ante-
nuptial debts
and liabilities.
Q. 17, s. 18.

17. 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 Ordinances relating to joint-stock companies; 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

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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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.

18. 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 Ordinances relating to joint-stock companies as aforesaid to the extent of all property 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 sum for which judgment may have been recovered in good faith 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 shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature amount or value of such property.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

Q. 54 Vic. No. 9, s. 19.

19. A husband and wife may be jointly sued in respect of any such liability (whether by contract or for 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; and 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; and 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.

Suits for ante-nuptial liabilities.

Q. 1b. s. 20.

20. In any question between husband and wife as to the title to or possession of investments or other property either party or any person bank corporation company public body society or public officer in whose books any investments or property of either party are or is standing may apply by summons or otherwise in a summary way to any judge of the Central Court.⁽⁴⁾

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

Q. 1b. s. 21.

(4) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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Such judge may on such application make such order with respect to the property in dispute and as to the costs of and consequent upon the application as he thinks fit or may direct the application to stand over from time to time and any inquiry touching the matters in question as he shall think fit.

Any order of a judge to be made under the provisions of this section shall be subject to appeal in the same way as a judgment or order pronounced or made by the same judge in a suit pending in such court. The judge may if either party so require hear any such application in his private room.

Any such person bank corporation company public body society or public officer as aforesaid shall in the matter of any such application for the purposes of costs or otherwise be treated as a stakeholder only.

Maintenance of children.

Q. 54 Vic. No. 9, s. 22.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children as the husband is now by law subject to for the maintenance of her children.

Legal representative of married woman.

Q. 1b. s. 23.

22. For the purposes of this Ordinance 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 be if she were living.

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

Q. 61 Vic. No. 6, s. 2.

23. In any action or proceeding now or hereafter 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.

Interpretation.

Q. 54 Vic. No. 9, s. 24.

24. The word "Contract" in this Ordinance shall include the acceptance of any trust or of the office of executrix or administratrix and the provisions of this Ordinance as to the 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.

The word "Property" in this Ordinance includes a thing in action.

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The word "Investment" shall include the following things:—

Deposits in any Government or other savings bank or in any building society or company or in any banking company or institution or in any joint-stock or other company.

Annuities by whomsoever granted.

Sums forming part of any public stock or fund or of any other stocks or funds transferable in the books of any bank company or public officer.

Shares stocks debentures debenture stock or other interests of or in any corporation company public body municipal commercial or otherwise or of or in any industrial provident friendly benefit building or loan society.

Lands held under the provisions of the Real Property Ordinances or any estate or interest therein and mortgages encumbrances charges or other securities rights powers or easements affecting any such lands or any estate or interest therein.

Lands held under the provisions of any Ordinance relating to land.

The words "Policy" "Policy of Assurance" and "The Insured" shall have the like signification as is bestowed upon similar words by the *Life Policies Protection Ordinance, 1912.*

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