



MONTSERRAT

## **CHAPTER 5.10**

# **MARRIED WOMEN'S PROPERTY ACT**

**Revised Edition**  
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **MARRIED WOMEN'S PROPERTY ACT**

Act 4 of 1887 .. in force 1 July 1887

Amended by S.R.O. 15/1956

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**MARRIED WOMEN'S PROPERTY ACT**

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## CHAPTER 5.10

### MARRIED WOMEN'S PROPERTY ACT

(Act 4 of 1887 and S.R.O. 15/1956)

#### Commencement

[1 July 1887]

#### Short title

1. This Act may be cited as the Married Women's Property Act.

#### Interpretation

2. In this Act—

“**contract**” includes the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act 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;

“**debentures or debenture stock of Montserrat**” means any debenture or debenture stock chargeable on the revenues of Montserrat under any Act;

“**property**” includes a thing in action.

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

3. (1) A married woman shall, in accordance with the provisions of 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.

- (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.

(3) Every contract hereafter 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 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.

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

#### **Property of woman married after the Act to be held by her as a *feme sole***

4. Every woman who marries after the commencement of this Act 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.

#### **Loans by wife to husband**

5. 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 general power by will**

6. 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.



**Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole***

7. Every woman married before the commencement of this Act 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 Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

**Stock, etc., standing in name of married woman**

8. All deposits in any savings bank, all annuities granted by any person, and all debentures or debenture stock of Montserrat, which, at the commencement of this Act, 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 Act, 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, 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, interests, and profits thereof, without the concurrence of her husband, and to indemnify all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, or other officer duly making payment of the same in respect thereof.

**Stock, etc., transferred into name of married woman**

9. All such deposits, annuities, debentures and debenture stock of Montserrat 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 Act, 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 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 that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married women to be the holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act, charter, by-law, articles of association, or deeds of settlement regulating such corporation or company.

**Stock, etc., in joint names of married woman and others**

10. All the provisions hereinbefore contained as to deposits in any savings bank, or in any other bank, annuities, shares, stock, debentures, debenture stock of Montserrat, or of or in any such corporation, company, public body, or society, as aforesaid respectively, which at the commencement of this Act, shall be standing in the sole name of any 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 estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act 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 of stock, etc.**

11. 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 deposit or annuity as aforesaid, or of 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.

**Investments by wife of money of husband without his consent**

12. If any investment in any such deposit or annuity as aforesaid, or in any share, stock, debenture, or debenture stock, of Montserrat, or 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 fund 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 application under section 19, order such investment and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against the 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 moneys so deposited or invested may be followed as if this Act had not passed.

**Married woman may insure her life; policy of insurance upon life of husband or wife may create trust, and policy moneys not to be subject to debts**

**13. (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 benefits thereof shall inure accordingly.

**(2)** A policy of assurance effected by any man upon 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. 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. 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. 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 the High Court. The receipt of a trustee or trustees duly appointed, or in default of 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 the value thereof in whole or in part.

**Remedies of married woman for protection and security of separate property**

**14.** Every woman, whether married before or after the commencement of this Act, 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; and in any indictment or other proceeding under this section, it shall be sufficient to allege such property to be her property:

Provided that 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, or, 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**

**15.** 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 any Act 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 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 that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act 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 Act, and to which she would not have been entitled for her separate use if this Act had not passed.

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

**16.** 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 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 is 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 direct any inquiry or proceedings, which it may think proper for the purpose of ascertaining the nature, amount, or value of such property:

Provided that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act, for or in respect of any such debt or other liability of his wife as aforesaid.

### **Suits for married woman's ante-nuptial liabilities**

**17.** 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 seeks 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 or damages, the judgment shall be a separate judgment against the wife as to her separate estate only.

### **Criminal liability of wife to husband**

**18.** A wife doing any act with respect to any property of her husband, which, if done by the husband with respect of the 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.

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

**19.** 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 aforesaid, in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any Judge; and such 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 touching the matters in question to be made in such manner as he shall think fit:

Provided that any order of a Judge made under this section shall be subject to appeal in the same way as an order made by a single Judge in a suit: Provided, also, that the Judge, if either party so require, may hear any such application in his private room:

Provided, also that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stake holder only.

### **Married woman as executrix or trustee**

**20.** 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 deposit or annuity, as aforesaid, or any debenture, or debenture stock of Montserrat, 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 that character, without her husband, as if she were a *feme sole*.

### **Saving of existing settlements and power to make future settlements**

**21. (1)** Nothing in this Act contained shall interfere with or effect 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.

**(2)** Notwithstanding subsection (1), a settlement or agreement for a settlement made by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or may have married, shall not be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age.

**(3)** 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 Act had not been passed.

### **Legal personal representative of married woman**

**22.** 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 if she were living.

**Power of Court of bind interest of married woman**

23. 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.

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

24. 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.

**Will of married woman**

25. Section 24 of the Wills Act, 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 re-published after the death of her husband.

**Disposition of trust estate by married woman**

26. A married woman shall be able without her husband, to dispose of, or to 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*.

**Power of attorney of married woman**

27. A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do.

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