

V. General provisions.

- Meaning of terms "clerk" and "assessor." 28. The clerk of the common council or board of aldermen of any incorporated city or borough in this state, when such city or borough shall extend to and include the limits of an entire township, shall perform the same duties, receive the same compensation and be liable to the same penalties as are by this act provided in respect to the clerks of the several townships in this state; and that in construing this act the word "clerk," meaning thereby the town clerk of any township in this state, shall be deemed and taken to include and mean the clerk of the common council or board of aldermen of any incorporated city or borough as aforesaid, and that the expression "assessor of the township" shall include and mean the assessor of any ward of any incorporated city, town or borough.
- Fees of clerk. 29. The clerk of each township shall be entitled to receive from the treasury of such township ten cents for the record of each marriage, birth and death.
- Fees of assessor. 30. The assessor, in addition to his other fees, shall be entitled to the sum of twenty-five cents for every demand he shall make as above directed on persons having neglected to make returns of marriages as aforesaid.

Supplement.

Approved March 17, 1876.

P. L. 1876, p. 158.

- Returns of births, deaths and marriages to be made to board of vital statistics. 31. Sec. 1. That in any county of this state in which there is now established by law a county board of health and vital statistics, the returns of births, deaths and marriages now required to be made by ministers of the gospel, physicians and other persons shall hereafter be made to said board of health and vital statistics only and in no other manner whatever; and it shall be the duty of the clerk of such board to make annual returns of such births, deaths and marriages to the secretary of state, for which the same fees shall be allowed and paid to the said clerk as are now allowed by law.

Married Women.

I. THE PROPERTY AND CONTRACTS OF A MARRIED WOMAN.

1. Woman married since July 4, 1852, to retain property owned by her at time of marriage.
2. Also property now owned by her.
3. Also property acquired during marriage.
4. To be entitled to her own earnings.
5. May bind herself by contract. Exception.
6. May execute conveyances for her land if husband lunatic, in prison or living separate.
7. May bind herself by covenants in conveyance.
8. May execute release without concurrence of husband.

II. MAY MAKE WILL.

9. Will of married woman.

III. MAY SUE AND BE SUED IN HER OWN NAME.

10. Husband not liable for debts of wife contracted before or after marriage.
11. Wife may sue without joining husband.
12. Effect of judgment against married woman.

IV. GENERAL PROVISIONS.

13. Ante-nuptial contracts.
14. Husband must join in conveyance of wife's land.
15. Wife's separate property not subject to husband, nor to his debts.
16. Married man living separate from his wife by virtue of decree may convey, &c., land.
17. Married woman living separate from husband may release or bar dower.
18. Married woman living separate from husband by virtue of decree, &c., may convey, etc., land.
19. Married woman may, with concurrence of husband, receipt for, assign and convey interest in her real or personal property.

V. INSURANCE FOR BENEFIT OF MARRIED WOMAN.

20. Married woman may cause life of husband to be insured for her sole use.
21. May be made payable to children on her death.
22. Married woman may transfer policy to her husband or other person with his assent.

P. L. 1852, p. 407.
 " 1857, p. 485.
 " 1864, p. 442.
 698.
 " 1868, p. 782.
 " 1873, p. 108.

An act to amend the law relating to the property of married women.

Revision—Approved March 27, 1874.

I. The property and contracts of a married woman.

Married woman to retain property owned by her at time of marriage.

P. L. 1852, p. 407,
 § 1.
 Amended.

1. That the real and personal property of any woman who has married since the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-two, or who may hereafter marry, and which she owned,

or shall own, at the time of her marriage, shall be and continue her sole and separate property, as if she were a single woman.(a)

2. That the real and personal property, and the rents, issues, and profits thereof, of any woman now married, shall be her sole and separate property, as if she were unmarried, except so far as the same may be liable for the debts of her husband contracted by any legal lien prior to the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-two.(b)

Also property now owned by her.
Ib. § 2.
Amended.
Exception.

3. That the real and personal property, and the rents, issues, and profits thereof, which any married woman has received or obtained since the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-two, or which she shall hereafter receive or obtain, by purchase, gift, grant, devise, descent, bequest, or in any manner whatever, shall be her sole and separate property, as though she were a single woman.(c)

Also property acquired during marriage.
Ib. § 3.
Amended.

4. That the wages and earnings of any married woman, acquired or gained by her after the passing of this act, in any employment, occupation, or trade in which she is employed, and which she carries on separately from her husband, and all investments of such wages, earnings, money, or property, shall be her sole and separate property, as though she were a single woman.(d)

To be entitled to her own earnings.
Revision.

5. That any married woman shall, after the passing of this act, have the right to bind herself by contract, in the same manner and to the same extent as though she were unmarried, and which contracts shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband; *provided*, that nothing herein shall enable such married woman to become an accommodation endorser, guarantor, or surety, nor shall she be liable on any promise to pay the debt, or answer for the default or liability of any other person.(e)

May bind herself by contract.

Revision.

Exception.

(a) This act was not intended to affect the estate of the husband, but only that of the wife, *Prall v. Smith*, 2 Vr. 244. The husband has no interest in his wife's lands during her life, *Porch v. Fries*, 3 C. E. Gr. 204. But see *Johnson v. Cummins*, 1 C. E. Gr. 97. Nor in an estate for life conveyed to her since 1852, *Adams v. Ross*, 1 Vr. 505. If she purchase lands with her own money, take the title in her husband's name, and they give a mortgage thereon, she acquires no equitable title on the ground that her labors mainly contributed to pay off the mortgage, *Skillman v. Skillman*, 2 Beas. 403. *Annin v. Annin*, 9 C. E. Gr. 184. Where money for the husband's benefit is raised by mortgaging the wife's lands, she, or her heir, will be deemed a creditor of the husband, *Hanford v. Bockee*, 5 C. E. Gr. 102. The act confers no power on the wife to take real or personal property by direct gift from her husband, *Dilts v. Stevenson*, 2 C. E. Gr. 407. Where lands were conveyed by a husband mediately to his wife, in fraud of creditors, the title of a bona fide purchaser from the wife will be enforced in equity against a judgment creditor of the husband, *Phelps v. Morrison*, 9 C. E. Gr. 195; 10 *Id.* 538. Lands purchased by her with funds received from the sale of her inchoate right of dower will be secured against her husband and his creditors, *Beals v. Storm*, 11 C. E. Gr. 372. If the wife lives upon her land, her husband may occupy and enjoy it jointly with her, *Vreeland v. Vreeland*, 1 C. E. Gr. 512. *Outcalt v. Ludlow*, 3 Vr. 239. *Magniac v. Thompson*, *Bald. C. C.* 344, 365. If the husband and wife convey lands of the wife, and he covert the proceeds without any contract as to repayment, his creditors' claims will prevail over his wife's, *Brown v. Richards*, 2 C. E. Gr. 32. A judgment against the husband is no lien upon nor can it affect her title, *Phelps v. Morrison*, 9 C. E. Gr. 195; 10 *Id.* 538. *Osborne v. Edwards*, 3 *Stock*. 73. *Thomas v. De Baum*, 1 *McCart*. 37. And equity will protect her title, *Emery v. Van Syckel*, 2 C. E. Gr. 564; reversing, 2 *McCart*. 144. *Johnson v. Vail*, 1 *McCart*. 423. Damages for her land taken for a public road are rightly assessed to her alone, *State*, *Covert v. Hulick*, 4 Vr. 307. A bond given to her in lieu of her inheritance, is her own, notwithstanding her husband sold it, in vested the proceeds in his own name and collected the interest thereon, *Vreeland v. Vreeland*, 1 C. E. Gr. 512. Where a wife's distributive share was paid to her husband, who invested a part of it in his own name and retained the residue in a check payable to his own order, *Held*, that, after his death, the wife could recover only the latter amount, *Hornor v. Webster*, 4 Vr. 387. Where the personal property of the wife is used in the household with her assent, it may, in an indictment for larceny, be laid either in her other husband; she having the general title and the husband a qualified possession, *Petc* ads. *State*, 6 Vr. 64. A husband's executor cannot recover a legacy or bequest unless reduced into possession prior to 1852, *Henry* ads. *Dilley*, 1 *Dutch*. 302.

(b) This section applies as well to after acquired property as to that in existence in 1852, *Vreeland v. Vreeland*, 1 C. E. Gr. 52. The will of a woman married before 1852, passed no legal estate in lands conveyed to her since then, *Naylor v. Field*, 5 *Dutch*. 287. A gift of money to a married woman

in 1848, without a settlement, is void as to creditors of the husband, *Smith v. Vreeland*, 1 C. E. Gr. 198. Where the husband's interest was acquired before 1852, it was not divested by that act, *Van Note v. Downey*, 4 *Dutch*. 219. The action in case of an injury to her property might be in the name of the husband alone. *Ibid.* *Teneick* ads. *Flagg*, 5 *Dutch*. 25. The husband's interest is liable to seizure under execution, *Nicholls v. O'Neill*, 2 *Stock*. 88. *Dayton v. Dusenbury*, 10 C. E. Gr. 110. See *Lathrop v. Gilbert*, 2 *Stock*. 344.

(c) This section gives a married woman a mere *ius tenendi*, *Naylor v. Field*, 5 *Dutch*. 287. *Pentz v. Simonson*, 2 *Beas*. 232. *Belford v. Crane*, 1 C. E. Gr. 265. *Vreeland v. Ryno*, 11 C. E. Gr. 160. She can take to her sole use a deed for a term of years, *Stall v. Fulton*, 1 Vr. 430. Or, an estate for life, *Ross v. Adams*, 1 Vr. 505. Or, a devise of an estate for life, *Riley v. Riley*, 4 C. E. Gr. 229. So, where a naked power of sale is given to executors, until exercised, the title will descend to a married daughter of the testator, *Romaine v. Hendrickson*, 9 C. E. Gr. 232. Independently of the statute an estate can be devised or given to a married woman for her separate use, directly, without the intervention of trustees, *Armstrong v. Ross*, 5 C. E. Gr. 109. The words "gift" and "grant," were not used in technical sense, but, to embrace all modes of acquiring land by deed, *Huyler v. Atwood*, 11 C. E. Gr. 504.

(d) At common law the husband was entitled to the wife's earnings, *Skillman v. Skillman*, 2 *Beas*. 403; 2 *McCart*. 478. *Belford v. Crane*, 1 C. E. Gr. 265. *Cramer v. Reford*, 2 C. E. Gr. 367. *Clinton Station Co. v. Hummel*, 10 C. E. Gr. 45. Unless, by express agreement or permission of her husband, *Stall v. Fulton*, 1 Vr. 430. *Johnson v. Vail*, 1 *McCart*. 423. But not unless her earnings were acquired separately, *National Bank v. Sprague*, 5 C. E. Gr. 13. *Quidort v. Pergeaux*, 3 C. E. Gr. 472. Such permission was good as against his creditors, *Peterson v. Mulford*, 7 Vr. 481. *Quidort v. Pergeaux*, 3 C. E. Gr. 472. Services rendered by the wife, as a wife, or money brought to her husband at their marriage, did not constitute a valid consideration for a conveyance of lands to her as against his creditors, *Carpenter v. Carpenter*, 10 C. E. Gr. 194; reversed *June* 1876. Nor, that a part of such purchase money was her earnings, *Persons v. Persons*, 10 C. E. Gr. 250.

(e) A married woman cannot charge her separate estate as surety, *Yankirk v. Skillman*, 5 Vr. 109. *Perkins v. Elliott*, 7 C. E. Gr. 127; 8 C. E. Gr. 526. See *Atwater v. Underhill*, 7 C. E. Gr. 599. Nor, as an accommodation endorser, *Peake v. Labaw*, 6 C. E. Gr. 269. Her knowledge of her husband's assuming to deal in her name, will not charge her estate, *Lawrence v. Finch*, 2 C. E. Gr. 234. Debts, contracted by her and for her benefit or that of her estate, may be enforced against her separate property, *Wharton v. Phillips*, 1 *Beas*. 221. *Green v. Pallas*, 1 *Beas*. 267. *Armstrong v. Ross*, 5 C. E. Gr. 109. But when she attempted to charge them on her estate, it must have been done by deed duly executed with her husband, *Armstrong v. Ross*, 5 C. E. Gr. 109; ante. p. 155. (a). *Infra*, § 14. A mortgage executed by her alone was held to be an exception in equity, *Wilson v. Brown*, 2 *Beas*. 277. *Harrison v. Stewart*, 3 C. E. Gr. 451. *Cutter v. Tuttle*, 4 C. E. Gr. 560. See *Den, Camp v. Quinby*, *Pen.* *985.

May execute conveyances for her land if husband a lunatic or in prison, or living separate.

P. L. 1864, p. 442.
" 1868, p. 782.
Amended.

May bind herself by covenants in conveyance.

P. L. 1857, p. 485.
" 1864, p. 442.
Amended.

Married women may execute valid receipt without concurrence of husband.

P. L. 1873, p. 108.
Amended.

Will of married woman.

P. L. 1864, p. 698.
Amended.
Proviso.

Husband not liable for debts of wife contracted before or after marriage.

Revision.
Suit against the wife therefor.

Wife may sue without joining husband.
Revision.

6. That any married woman whose husband may be an idiot, lunatic, or of unsound mind, or whose husband may be imprisoned in the state prison of this or any other state, upon conviction of any crime, or who is living in a state of separation from her husband, under and by virtue of the final judgment or decree of any court, may, at any time during the continuance of such idiocy, lunacy, unsoundness of mind, imprisonment, or separation, sell, release, transfer and convey any interest, estate, or right that she may have in any real property, in the same manner and with the like effect as if she were sole and unmarried; but such sale, conveyance, or release shall not affect any estate or right that her husband may then have in such property. (See *Sec. 18*).

7. That in any deed hereafter made by any married woman of full age, who joins with her husband in executing said deed, of any lands or of any estate therein, it shall be lawful for her to enter into any covenant as to the title of the lands thereby conveyed, or against encumbrances thereon, or warranting the same; *provided*, that such covenants, except so far as relates to land, or some interest therein owned by her in her own right, shall have no greater or other effect than to estop her and all persons claiming as her heirs, or by or through her in the same manner as if she were a single woman.^(a)

8. That any married woman who has received or shall hereafter receive, or acquire by purchase, gift, grant, devise, descent, or in any other manner any real or personal property, or the rents, issues and profits thereof, may execute without the concurrence of her husband, a valid receipt, release or discharge therefor in the same manner and with the like effect as if she were sole and unmarried; which receipt, release or discharge, duly acknowledged in the same manner as deeds of real estate are by law required to be acknowledged, may be recorded in the surrogate's office of the proper county, in the same manner and with the like effect as other receipts and discharges may now be recorded in said office.

II. May make will.

9. That any will or testament hereafter made in due form of law, by any married woman above the age of twenty-one years, of any real or personal property, shall be held to be as valid and effectual in law as if she were, at the time of making the said will, and at the time of her death, an unmarried woman; *provided always*, that nothing herein contained shall be so construed as to authorize any married woman to dispose, by will or testament, of any interest or estate in real property to which her husband would be, at her death, entitled by law; but such interest or estate shall remain and vest in the husband in the same manner as if such will had not been made.^(b)

III. May sue and be sued in her own name.

10. That a husband shall not, by reason of any marriage which shall take place after this act has come into operation, be liable for the debts of his wife, contracted before marriage; nor shall a husband be liable for any debts of his wife hereafter contracted by her, in her own name, after marriage; but the wife shall be liable to be sued in her own name, separately therefor, and any property belonging to her shall be liable to satisfy such debt, in the same manner as if she were unmarried.

11. That a married woman may maintain an action in her own name, and without joining her husband therein for all breaches of contract and for the recovery of all debts, wages, earnings, money and all property, both real and personal, which by this act is declared to be her separate property, and for all damages done thereto, and she shall have, in her own name, the same remedies for the recovery and protection of such

(a) The deed of a married woman derived all its efficacy from the statute, and she was not bound by any covenant therein, *Den, Hopper v. Demarest*, 1 Zab. 525. Covenants in a conveyance of the husband's property situate in N. J., made by a wife living in a state whose laws do not authorize such covenants, are invalid, *Wilson v. King*, 8 C. E. Gr. 150.

(b) At common law a married woman could make a will of her chattels, with the assent of her husband, *Van Winkle v. Schoonmaker*, 2 McCart. 384. She may leave all her prop-

erty, real and personal, to her husband, *Richards v. Clark*, 3 C. E. Gr. 327; affirmed, 6 C. E. Gr. 361. Her will is valid without his assent, except so far as his rights may be affected therein, *Beals v. Storm*, 11 C. E. Gr. 372. His assent once given is irrevocable, *Ibid.* See *Van Winkle v. Schoonmaker*, 2 McCart. 384. She cannot dispose of any interest in real or personal property to which he is entitled at her death, *Fretland v. Ryno*, 11 C. E. Gr. 160. Although living separate from him, *Ibid.*

property as if she were an unmarried woman; and in any civil or criminal proceedings, it shall be sufficient to allege such property to be her property.

12. That any judgment obtained against any married woman by virtue of this act, shall be valid and effectual, and all property, real or personal, sold under an execution issued thereon, executed according to law, shall become vested in the purchaser as fully and effectually as if such judgment and execution were against an unmarried person.

Effect of judgment against married woman. Revision.

IV. General provisions.

13. That all contracts made between persons in contemplation of marriage, shall remain in full force after such marriage takes place.

Ante-nuptial contracts. P. L. 1852, p. 407, § 4.

14. That nothing in this act contained shall enable any married woman to execute any conveyance of her real estate, or any instrument encumbering the same, without her husband joining therein as heretofore, except in those instances for which express provision is herein made; nor shall any conveyance, deed, contract or act of such married woman, nor shall any judgment or decree against her, in any respect impair or affect the right of the husband in her lands as tenant by the curtesy, after her death; nor shall anything herein enable husband or wife to contract with, or to sue each other, except as heretofore.

Husband must join in conveyance of wife's land.

Revision.

Act of wife not to bar the curtesy of husband.

15. That in all cases in this act in which property, things in action, or other rights or interests are herein declared to be the separate property of a married woman, such property, things in action, and rights and interests shall not be subject to the disposal of her husband, nor liable for his debts.

Wife's separate property not subject to husband, nor to his debts.

P. L. 1852, p. 407.

Supplement.

[SEC. 1 amended and supplied by *Sec. 18, post*].

Approved April 5, 1875.

P. L. 1875, p. 52.

16. SEC. 2. That any married man who is living in a state of separation from his wife under and by virtue of the final judgment or decree of any court, when such judgment or decree is founded upon his application for such separation, may, at any time during the continuance of such separation, convey, mortgage, and lease, or devise any interest, estate, or right that he may have in any real property, except such as came to him by gift through or from his said wife, in the same manner, and with like effect as if he were sole and unmarried.

Married man living separate from his wife by virtue of decree of court may convey, mortgage, &c., property as if unmarried.

Supplement.

Approved April 9, 1875.

P. L. 1875, p. 93.

17. SEC. 1. That any married woman living in a state of separation from her husband and entitled by the final decree of any court to alimony or separate maintenance, may by her deed to him or any other person, executed with or without his concurrence, acknowledged by her in the manner required by law in case of husband and wife joining in a conveyance of lands, release or bar her dower in any lands in this state whereof her husband is seized at the execution of such deed or of which he may thereafter become seized.

Married woman living separate from her husband may release or bar her dower, &c.

Supplement.

Approved February 15, 1876.

P. L. 1876, p. 18.

18. SEC. 1. That section one of the supplement to the above entitled act, which supplement was approved the fifth day of April, eighteen hundred and seventy-five, and which section is as follows, viz:

Section amended.

"1. That any married woman who is living in a state of separation from her husband under and by virtue of the final judgment or decree of any court, when such judgment or decree is founded upon her application for such separation, may at any time during the continuance of such separation, convey, mortgage and lease or devise any interest, estate or right that she may have in any real property, such as came to her by gift through or from her said husband, in the same manner and with the like effect as if she were sole and unmarried," be amended by the insertion of the word "except" between the words "real property" and the words "such as," so that the said section, as amended, shall read as follows, viz:

Married woman living separate from her husband by virtue of decree of court may convey, mortgage, &c., property, as if sole.

1. That any married woman who is living in a state of separation from her husband, under and by virtue of the final judgment or decree of any court, when such judgment or decree is founded upon her application for such separation, may, at any time during the continuance of such separation, convey, mortgage and lease or devise any interest, estate or right that she may have in any real property, except such as came to her by gift, through or from her said husband, in the same manner and with the like effect as if she were sole and unmarried.

A further supplement to the act entitled "An act for the better securing the property of married women," approved March twenty-fifth, eighteen hundred and fifty-two.

P. L. 1874, p. 15.

Approved February 26, 1874.

Married woman may, with the concurrence of the husband, convey any interest which she may be entitled to in any real or personal property.

19. SEC. 1. That any married woman who now is, or may hereafter become entitled, by gift, devise, or bequest, to any contingent estate, or interest in any real or personal property or estate, may, with the concurrence of her husband, compound and receipt for, assign and convey the same, in all cases where she lawfully might, if a *feme sole*; and every release, receipt, assignment, discharge, agreement, covenant, or contract, thereupon entered into by her in regard to the same and to the said property, shall be as valid and binding in every respect, upon her, her heirs, executors, administrators, and assigns, and any and all persons claiming under her, them or either of them, as if she were, at the time of entering into the same, a *feme sole*, and, when duly executed and acknowledged in the manner provided by law for conveyance of real estate, may be recorded in the surrogate's office, and whenever it relates to real estate, in the clerk's or register's office, of the proper county or counties, in the same manner and with like effect as other receipts and discharges may now be recorded therein.

V. Insurance for benefit of married women.

An act in respect to insurance for lives for the benefit of married women.

P. L. 1851, p. 34.

Approved February 19, 1851.

Married woman may cause life of her husband to be insured for her sole use.

20. SEC. 1. It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent as her trustee, to cause to be insured, for her sole use, the life of her husband for any definite period or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her, to and for her own use, free from the claims of the representatives of her husband or his creditors.

[Remainder of SEC. repealed by P. L. 1871, p. 25].

May be made payable to children on her death.

21. SEC. 2. In case of the death of the wife before the decease of her husband, the amount of the insurance may be made payable, after the death, to her children, for their use, and to their guardian, if under age.^(a)

Supplement.

Approved April 8, 1875.

P. L. 1875, p. 78.

Married woman may transfer policies to her husband or other person with his assent.

22. SEC. 1. That from and after the passage of this act, any married woman holding a policy of insurance on the life of her husband or other person, may transfer and assign the same to her husband or to any other person or persons with his assent, as if she was at the time of the making such transfer and assignment a single female, and the assignee or assignees of such policy or policies shall hold the same in as full and ample a manner as if the assignor at the time of making such assignment had been sole and unmarried.

(a) See *Landrum v. Knowles*, 7 C. E. Gr. 594. *De Ronge v. Elliott*, 8 C. E. Gr. 486.