

or shall be so directed by the common council, or other governing body thereof, before transmitting said certificates to the state bureau of vital statistics, to make a complete record of the marriages, births and deaths occurring in such city, which record shall be a transcript of the names and vital facts appearing upon the certificates of marriages, births and deaths delivered to him as hereinbefore directed; the said record shall be so made up that the marriages, the births and the deaths shall appear in separate and distinct classes, in books of such form as may be approved by the local board of health, and for making such record the said registrar or clerk shall be entitled to receive from the disbursing officer of said city the sum of three cents for each certificate thus recorded in addition to his other fees and salary.]

## Married Women.

### I. THE PROPERTY AND CONTRACTS OF A MARRIED WOMAN.

1. Woman married since July 4th, 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. Amended by section 26.
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.

### V. SUPPLEMENTS.

16. Amended by section 19.
17. Married man living separate from his wife by virtue of a decree may convey, mortgage, &c., as if unmarried.
18. Married woman living separate from her husband may release or bar her dower.
19. Married woman living separate from her husband by virtue of decree may convey, mortgage, &c., as if unmarried.

20. Amended by section 22.
21. Amended by section 23.
22. A married woman living separate from her husband, who neglects to support her, may, under order of chancery, convey, mortgage, &c., her lands as if unmarried.
23. Married woman may release inchoate right of dower where husband's lands have been sold under judgment or decree, &c.
24. Married woman may execute conveyance of her real estate when the deed is in execution of a written contract to which her husband was a party, &c.
25. Act applicable to contracts heretofore made.
26. Married women may bind themselves by contract.
27. Repealer.
28. Married woman may, with concurrence of husband, convey any interest which she may have in real or personal property.

### VI. MISCELLANEOUS ACTS.

29. Married woman may cause life of her husband to be insured for her sole use.
30. Insurance may be made payable to children on her death.
31. Married woman may transfer policies to husband or other person with his assent.
32. Married woman living separate from husband may, in certain cases, convey, mortgage, &c., real property.
33. In certain cases married woman may convey real property without concurrence of husband.
34. Repealer.
35. Married woman may convey lands where husband is a lunatic under order of chancery.
36. Court of chancery may inquire into merits of application to make such conveyance.
37. Further provisions concerning sale or exchange of lands by a married woman whose husband is a lunatic, &c.
38. Court may impose such terms upon the conveyance as it shall deem advisable.

## I. The property and contracts of a married woman.

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

Revison—Approved March 27, 1874.

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

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)

(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. *Skullman v. Skullman*, 2 Beas. 403. *Annis v. Annis*, 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

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. (a)

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. (b)

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. (c)

To be entitled to her own earnings.  
Revision.

5. [Amended by Sec. 26, *post.*]

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, *post.*]

May execute conveyances for her own land if husband a lunatic or in prison, or living separate.  
P. L. 1864, p. 442.  
" 1868, p. 782.  
Amended.

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 incumbrances 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

May bind herself by covenants in conveyance.  
P. L. 1857, p. 485.  
" 1864, p. 442.  
Amended.

creditor of the husband. *Hanford v. Bockee*, 5 C. E. Gr. 103. The act confers no power on the wife to take real or personal property by *direct* gift from her husband. *Dills 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 C. E. Gr. 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. 872. 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.* 844, 365. If the husband and wife convey lands of the wife, and he convert 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 C. E. Gr. 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 v. Covert v. Hulick*, 4 Vr. 307. A bond given to her in lieu of her inheritance is her own, notwithstanding her husband sold it, invested 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. *Horner 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 or her husband; she having the general title and the husband a qualified possession. *Petre* 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. A conveyance of lands, since the passage of the married woman's act, to husband and wife, does not create a tenancy in common; to constitute such tenancy there must be in the deed an expression of an intention to do so. *Bullitt v. Rosenblath*, 15 Stew. 651. See, also, *Vank v. Ravitan River E. R. Co.*, 27 Vr. 395.

(a) This section applies as well to *after-acquired* property as to

that in existence in 1852. *Vreeland v. Vreeland*, 1 C. E. Gr. 512. 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. *Ib.* *Teneick* ads. *Flagg*, 5 Dutch. 25. The husband's interest is liable to seizure under execution. *Nichols v. O'Neill*, 2 Stock. 88. *Dayton v. Dusenbury*, 10 C. E. Gr. 110. See *Lathrop v. Gilbert*, 2 Stock. 344.

(b) This section gives a married woman a mere *ius tenendi*. *Naylor v. Field*, 5 Dutch. 287. *Pentz v. Simonson*, 2 Beas. 282. *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 granted 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 a technical sense, but to embrace all modes of acquiring land by deed. *Hwyler v. Atwood*, 11 C. E. Gr. 504.

(c) At common law the husband was entitled to the wife's earnings. *Skilman v. Skilman*, 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. Fergeaux*, 3 C. E. Gr. 472. Such permission was good as against his creditors. *Peterson v. Mulford*, 7 Vr. 481. *Quidort v. Fergeaux*, 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, 12 C. E. Gr. 502. Nor that a part of such purchase-money was her earnings. *Persons v. Persons*, 10 C. E. Gr. 250.

claiming as her heirs, or by or through her in the same manner as if she were a single woman. <sup>(a)</sup>

Married woman may execute valid receipt without concurrence of husband.  
P. L. 1873, p. 108.  
Amended.

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.

Will of married woman.  
P. L. 1864, p. 698.  
Amended.

Proviso.

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. <sup>(b)</sup>

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

Husband not liable for debts of wife contracted before or after marriage.  
Revision.  
Suit against the wife therefor.

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.

Wife may sue without joining husband.  
Revision.

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 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. <sup>(c)</sup>

Effect of judgment against married woman.  
Revision.

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.

<sup>(a)</sup> 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 New Jersey, 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.

<sup>(b)</sup> 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 property, real and personal, to her husband. *Richards v. Clark*, 3 C. E. Gr. 327; affirmed, 6 C. E. Gr. 331. Her will is valid without his assent, except so far as his rights may be affected therein. *Beads v. Storm*, 11 C. E. Gr. 372. His assent once given is irrevocable. *Id.* 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. *Vreeland v. Ryno*, 11 C.

*E. Gr.* 160. Although living separate from him. *Id.* See, also, *Compton v. Pierson*, 1 Stew. 229. If she have no issue born alive, she may make a will disposing of her entire estate, real and personal, without the consent of her husband. *Stoutenburg v. Hopkins*, 16 Stew. 577. The right of the husband to a life estate in the lands of the wife at her death cannot be devised by her will, made by the consent of the husband in writing. *Middleton v. Steward*, 2 Dick. 233.

<sup>(c)</sup> A married woman may maintain a suit for specific performance of a contract to convey land to her, in her own name, without joining her husband as a party. *Young v. Young*, 18 Stew. 23. And where she is a tenant in common with others she may maintain a suit for partition without joining her husband as a party. *Castner v. Stiker*, 16 Stew. 8. See *Van Cleave v. Rook*, 11 Vr. 25.

**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 incumbering 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. (a)

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.

**V. Supplements.**

**Supplement.**

Approved April 5, 1875.

P. L. 1875, p. 52.

16. SEC. 1. [Amended and supplied by Sec. 19, *post.*]

17. 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.

18. 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.

**Supplement.**

Approved February 15, 1876.

P. L. 1876, p. 18.

19. 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 [see Sec. 16, *ante*], and which section is as follows, viz.:

"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.:

(a) A married woman can, without the co-operation of her husband, create a term of years in her lands. *Sullivan v. Barry*, 17 Vt. 1; affirmed, 18 Vt. 339.

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

[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.]

P. L. 1878, p. 334.

Supplement.

Approved April 5, 1878.

20. SEC. 1. [Amended by Sec. 22, *post*.]

P. L. 1881, p. 161.

Supplement.

Approved March 22, 1881.

21. SEC. 1. [Amended by Sec. 23, *post*.]

An act to amend an act entitled "Supplement to an act entitled 'An act to amend the law relating to the property of married women,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplemental act was approved April fifth, one thousand eight hundred and seventy-eight.

P. L. 1889, p. 43.

Approved March 7, 1889.

22. SEC. 1. That section one of said supplemental act approved April fifth, one thousand eight hundred and seventy-eight [see Sec. 20, *ante*], be and the same is hereby amended so that henceforth said section one shall be and read as follows, to wit :

A married woman living separate from her husband, who neglects to support her, may, under order of chancery, convey, mortgage, &c., her lands as if unmarried.

[That any married woman who owns real property in the state of New Jersey and is living in a state of separation from her husband, and whose husband neglects and refuses to maintain and support her, may, at any time during the continuance of such separation, neglect and refusal to support and maintain her, apply by petition to the court of chancery of this state, asking said court to make an order or decree that, during such separation, neglect and refusal to support her, she may sell, convey, mortgage or lease any interest, estate or right that she may have in any such real property, in the same manner and with like effect as if she were sole and unmarried; and upon such notice to the husband, or by publication, according to the law and practice of said court in case of absent defendants, as the court may direct, and upon satisfactory proof to said court that she is living separate and apart from her said husband, and that he neglects and refuses to support and maintain her, it shall be lawful for said court to decree or order that, during such separation, neglect and refusal to support her, she may sell, convey, mortgage and lease any interest, estate or right that she may have in such 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; and that any sale, conveyance, mortgage or lease by her of any interest, estate or right which she may have in such real property, made in pursuance of such order or decree, shall pass any and all such interest, estate or right that she may have in such 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 supplement to an act entitled "A further supplement to an act entitled 'An act to amend the law relative to the property of married women,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved March twenty-second, one thousand eight hundred and eighty-one.

Approved March 5, 1890. P. L. 1890, p. 40-

23. SEC. 1. That section one of the act to which this is amendatory [see Sec. 21, *ante*], be and the same is hereby amended to read and be in the following words, to wit :

[That any married woman whose husband's real estate or any part thereof, may have been or shall be sold and conveyed under or by virtue of any judgment or decree or by virtue of any deed, release or assignment executed by the husband, or by his assignee in bankruptcy, in which the wife has not or shall not join in the execution thereof, may, without her husband joining with her in the execution thereof, execute and deliver a release of such real estate, so sold, from her inchoate right of dower therein, and thereby discharge such real estate, so sold, from such inchoate right of dower, as effectually as she might if her husband should join with her in the execution of such release.]

Married woman may release inchoate right of dower where husband's lands have been sold under judgment or decree, &c.

Supplement.

Approved March 28, 1892. P. L. 1892, p. 292.

24. SEC. 1. That hereafter any married woman above the age of twenty-one years may execute and deliver any conveyance of her real estate without her husband joining therein, and such conveyance when duly acknowledged, and such acknowledgment certified according to law, shall be good and effectual to convey the lands, tenements or hereditaments thereby intended to be conveyed ; *provided*, that such deed is given in execution of a written contract made by such married woman, to which her husband was or shall be a party, or to which he has given or shall give his assent in writing, or to the terms, conditions and stipulations of which he in writing has bound or made subject or shall bind and make subject his right, title or interest in said real estate ; *and provided, further*, that such contract shall have been or shall be acknowledged, as in case of a conveyance of land by a married woman, and such assent or other writing signed by such husband shall have been or shall be acknowledged or proved, as in case of a conveyance of land, and such contract and assent, or other writing, shall have been or shall be recorded before or at the time of the recording of any such conveyance.

Married woman may execute conveyance of her real estate when the deed is in execution of a written contract to which her husband was a party, &c.

25. SEC. 2. That the provisions of this act shall apply to deeds given or hereafter to be given in execution of any contract heretofore made as well as to contracts hereafter to be made.

Act applicable to contracts heretofore made.

Amendatory act.

Passed June 13, 1895. P. L. 1895, p. 821.

26. SEC. 1. That section five of the act entitled "An act to amend the law relating to the property of married women" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended so as to read as follows :

[That any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, 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 indorser, 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 ; *provided further, however*, that if on the faith of any indorsement, contract of guaranty or suretyship, promise to pay the debt or to

Married women may bind themselves by contract.

Proviso.

answer for the default or liability of any other person, any married woman obtains, directly or indirectly, any money, property or other thing of value, for her own use, or for the use, benefit or advantage of her separate estate, she shall be liable thereon as though she were unmarried, anything herein contained to the contrary notwithstanding.] (a)

Repealer.

**27. SEC. 2.** That all acts and parts of acts, inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

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.

Approved February 26, 1874.

P. L. 1874, p. 15.

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

**28. 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.

## VI. Miscellaneous acts.

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

Approved February 19, 1851.

P. L. 1851, p. 34.

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

**29. SEC. 1.** That 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

(a) A married woman cannot charge her separate estate as surety. *Fankirk v. Skillman*, 5 Vr. 109. *Perkins v. Elliott*, 7 C. E. Gr. 127, 8 C. E. Gr. 528. See *Atwater v. Underhill*, 7 C. E. Gr. 539. Nor as an accommodation indorser. *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. *Wheaton v. Phillips*, 1 Beas. 221. *Green v. Pallas*, 1 Beas. 287. *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. 384 (b). *Ante*, Sec. 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. *Culler v. Tuttle*, 4 C. E. Gr. 560. See *Den, Camp v. Quinby*, Pen. \*985. A married woman's executory contracts to pay the debts of her husband cannot be enforced, but she cannot rescind such a contract after its execution. *Warwick v. Lawrence*, 16 Stew. 179. Where a bill of exchange is drawn upon a married woman for the purpose of paying a debt due by a third person to the drawer, her acceptance is void. *Cooley v. Bancroft*, 14 Vr. 353. Judgment confessed by husband and wife will be set aside at the instance of the wife when the debt for which it is confessed was that of the husband, she being only surety for its payment. *Van Deventer v. Van Deventer*, 17 Vr. 480. Where a married woman purchases from her husband's creditor the debt owing by her husband and a third person, and gives her own note for the price, such note is not invalid as a promise to pay the debt of another. *First National Bank of Cranbury v. Dohm*, 28 Vr. 363. If the contract of a married woman be such as a married woman is by law incapable of entering into, her warrant of attorney to enter judgment upon it is a nullity, and judgment entered therein will be vacated. *Heywood v. Shreve*, 15 Vr. 34. An action at law cannot be maintained by an indorsee upon a promissory note made by a married woman to a mercantile firm of which her husband was a member. *National Bank of*

*Rahway v. Brewster*, 20 Vr. 231. A married woman may contract to sell her real estate, and specific performance will be decreed after her husband's death. *Union Brick and Tile Mfg. Co. v. Lortillard*, 17 Stew. 1. A married woman may transfer her property to secure the payment of the debt of another, and when she has actually made such transfer she cannot afterwards, at will, avoid it. *Walker v. Dixon Crucible Co.*, 2 Dick. 342. Where a promissory note, made payable to the order of the husband, is indorsed by him and by his wife, she being, in fact, an accommodation indorser for her husband, if the note be discounted by a bank in good faith for the wife, at her request, she will be estopped from setting up her accommodation indorsement. *First National Bank of Elizabeth v. Craig*, 1 N. J. L. J. 153. A married woman may lawfully contract for the services of a physician and render herself personally liable therefor. *In re Eleanor Green*, 6 N. J. L. J. 90. In an action on a promissory note given by a husband and wife, the wife pleaded that she was a married woman, and that she signed the note as security for the debt of her husband. A motion to strike out the pleas was refused, and evidence thereunder declared to be admissible not to vary the terms of the written contract, but to show the status of the party. *Mount v. Zisken and wife*, 7 N. J. L. J. 71. A wife made her promissory note to her husband's order and delivered it to him to enable him to procure its discount, and with the proceeds pay his own debt. The husband applied for its discount, to a bank official, who had notice that the note was made without consideration and for discount, but did not have notice that the proceeds were to be applied for the husband's benefit. The bank official offered to discount it by a check to the wife's order, which the husband accepted and afterwards procured his wife to indorse and deliver it to him, she knowing that it was the proceeds of the discount of her note. *Held*, that the wife was estopped from setting up against the bank that she was a mere surety on the note. *Hackettstown National Bank v. Mingo*, 7 Dick. 156. See, also, *Thomas v. Weaver*, 7 Dick. 580.

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 section repealed by P. L. 1871, p. 25.]

**30. SEC. 2.** That 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)

Insurance may be made payable to children on her death.

#### Supplement.

Approved April 8, 1875. P. L. 1875, p. 78.

**31. 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.

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

#### An act for the better securing of the property of married women living in a state of separation from their husbands.

Approved March 3, 1880. P. L. 1880, p. 82.

**32. SEC. 1.** That any married woman who is living in a state of separation from her husband, and who now is or may hereafter become entitled by gift, devise, bequest or descent to any contingent estate, or interest in any real or personal property or estate, except any estate that may have come to her from her husband, may, without the consent or concurrence of her husband, compound and receipt for, assign, convey, sell, mortgage and lease or devise any interest, estate or right that she may have in any real property, 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 real or personal 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. [See Sec. 33, *post.*]

Married woman living separate from her husband may in certain cases convey, sell, mortgage, &c., real property.

All releases, agreements, assignments, &c., declared valid.

#### Supplement.

Approved March 28, 1888. P. L. 1888, p. 266.

**33. SEC. 1.** That the provisions of the first section of an act entitled "An act for the better securing of the property of married women living in a state of separation from their husbands," approved March third, one thousand eight hundred and eighty, be and the same are hereby extended to any married woman living in a state of separation from her husband, and having had no issue the result of such marriage, and that such married woman may, without the concurrence of her said husband or his joining as a party to any deed of conveyance, grant, sell and convey any real property whereof she may be seized in fee-simple by deed of conveyance executed and delivered to her before said marriage.

In certain cases married woman may convey real property without concurrence of husband.

**34. SEC. 2.** That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Repealer.

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



## An an in relation to conveyances of land by married women.

Approved March 5, 1880.

P. L. 1880, p. 41.

Married woman may convey lands where husband is a lunatic, under order of chancery.

**35. SEC. 1.** That in case any married woman owning lands situate within this state, shall desire to convey the same, but shall not be able to do so by reason of the lunacy or other mental incapacity of her husband to join with her in the execution of proper deeds of conveyance therefor, it shall be lawful for the court of chancery, upon petition filed for that purpose, to direct that such married woman may convey the said lands by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey the said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein, in case he shall survive her.

Court of chancery may inquire into merits of application to make such conveyance.

**36. SEC. 2.** That upon a petition filed for the purpose aforesaid, the court of chancery may, in a summary manner, inquire into the merits of the application, by reference to a master or otherwise, and in case the said court shall order that such married woman may convey her lands as aforesaid, said court shall ascertain the actual money value of the estate or interest of the husband in such lands, if any, by a calculation based upon the actual cash value of said lands, and upon the expectancy of life of the said husband and wife, in the manner and according to the rules now or hereafter in use in said court, and that the value thereof shall be paid out of the purchase-money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband, duly appointed by any competent court of this state or elsewhere, to be held by him as part of the estate of such husband, or if there be no such guardian or committee, then such payment shall be made to the clerk of the court, and that the order of the court shall specifically direct how much money shall be so paid and to whom such payment shall be made by said purchaser.

## Supplement.

Approved April 2, 1891.

P. L. 1891, p. 301.

Further provisions concerning sale or exchange of lands by a married woman whose husband is a lunatic, &c.

**37. SEC. 1.** That in case any married woman owning lands situate within this state has sold or shall be desirous of selling the same, or any part thereof, for the purpose of investing the proceeds thereof in other lands in this state, or has exchanged or shall be desirous of exchanging the same, or any part thereof, for other lands of equal value in this state, but shall not be able to convey her said lands so sold or exchanged, or intended so to be, by reason of the inability of her husband, through lunacy or other mental incapacity, to join with her in the execution of proper deeds of conveyance therefor, it shall and may be lawful for the court of chancery, upon petition filed for that purpose and upon satisfactory proof of the truth of the allegations therein contained, to make an order confirming or authorizing such sale or exchange, and directing that such married woman may convey her lands so sold or exchanged by deed or deeds executed by herself, without the concurrence of her husband, which deed or deeds of conveyance shall convey her said lands free from any claim, estate or right of the husband of such married woman, and shall be an absolute bar to any right of curtesy therein in case he shall survive her.

Court may impose such terms upon the conveyance as it shall deem advisable.

**38. SEC. 2.** That upon making the order aforesaid it shall not be necessary for said court to "ascertain the actual money value of the estate or interest of the husband in such lands, if any," or to direct any sum to "be paid out of the purchase-money of the said lands by the purchaser to the committee or guardian of said lunatic or incapacitated husband," or "to the clerk of the court," as required by the second section of the act to which this is a supplement; but in making such order the court may impose such terms or conditions as it shall deem advisable.