

No. 15 of 1876.

An Ordinance to amend the Law relating to the Matrimonial Rights of Married Persons with regard to Property and the Law of Inheritance.

(See Ordinances No. 2 of 1889 and No. 3 of 1890.)

Preamble.

WHEREAS it is expedient to amend the law relating to the matrimonial rights of married persons with regard to property and the law of inheritance: It is hereby enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows:

I.—Preliminary.

Short title.

Commencement.

1 This Ordinance may be cited as "The Matrimonial Rights and Inheritance Ordinance, 1876," and shall come into operation at such time as Her Majesty's confirmation thereof shall be proclaimed in the *Government Gazette* of this island.*

Where persons of different race intermarry, laws to which the husband is subject to prevail. Ordinance not otherwise to apply to Kandyans or Mohammedans, or Tamils under the Tésavalámai.

2 Whenever a woman marries, after the proclamation of this Ordinance, a man of different race or nationality from her own, she shall be taken to be of the same race and nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again. Save as aforesaid, this Ordinance shall not apply to Kandyans or Mohammedans, or to Tamils of the Northern Province who are or may become subject to the Tésavalámai.

* Her Majesty's assent proclaimed 29th June, 1877.

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3 In this Ordinance, unless there shall be something repugnant in the subject or context—

Interpretation clause.

The expression "immovable property" includes land, incorporeal tenements, and things attached to the earth or permanently fastened to anything which is attached to the earth, and any interest in land except that of a mortgagee.

The expression "movable property" means property of every description except immovable property.

The expression "matrimonial rights" means the respective rights and powers of married parties in and about the management, control, disposition, and alienation of property belonging to either party, or to which either party may be entitled during marriage.

The word "unmarried" means not having a husband or wife living.

All words expressive of relationship shall apply to a child in the womb at the time in question who is afterwards born alive.

4 The 6th section of Ordinance No. 21 of 1844, intituled "An Ordinance to make better provision for the disposal of Landed Property," and the 8th section of the Ordinance No. 5 of 1852, intituled "To introduce into this Colony the Law of England in certain cases, and to restrict the operation of the Kandyan Law," are hereby repealed, so far as the same are inconsistent with the provisions of this Ordinance.

Repeal of certain sections of former Ordinances.

II.—Matrimonial Rights of Husband and Wife in respect of Property.

5 The respective matrimonial rights of any husband and wife with regard to property or status arising under or by virtue of any marriage solemnized before the proclamation of this Ordinance, and all rights which any other person may have acquired or become entitled to under or by virtue of any such marriage, shall (except where hereinafter otherwise expressly provided) be governed by such law as would have been applicable thereto if this Ordinance had not been passed.

This Ordinance not to affect rights acquired under marriages solemnized before the proclamation of this Ordinance.

6 The respective matrimonial rights of every husband and wife, domiciled or resident in this island, and married after the proclamation of this Ordinance, in, to, or in respect of movable property shall, during the subsistence of such marriage and of such domicile or residence, be governed by the provisions of this Ordinance.

Rights of husband and wife domiciled or resident in Ceylon in respect of movable property to be governed by this Ordinance.

7 The respective matrimonial rights of every husband and wife, married after the proclamation of this Ordinance, in, to, or in respect of any immovable property situate in this island shall, during such marriage, be governed by the provisions of this Ordinance.

Rights of husband and wife in respect of immovable property situate in Ceylon to be governed by this Ordinance.

8 There shall be no community of goods between husband and wife, married after the proclamation of this Ordinance, as a consequence of marriage, either in respect of movable or immovable property.

Community of goods not a consequence of marriage.

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Immovable
property of the
wife.

9 Any immovable property to which any woman, married after the proclamation of this Ordinance, may be entitled at the time of her marriage, or may become entitled during her marriage shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate, and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management, or improvement of such property, or for or in regard to any charges, rates, or taxes imposed by law in respect thereof, and her receipts alone or the receipts of her duly authorized agent shall be a good discharge for the rents, issues, and profits arising from or in respect of such property. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property, by any lawful act *inter vivos* with the written consent of her husband, but not otherwise, or by last will without such consent, as if she were unmarried.

Wages and
earnings of the
wife.

10 The wages and earnings of any married woman, whether married before or after the proclamation of this Ordinance, which may be acquired or gained by her after the proclamation of this Ordinance in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, shall be deemed and taken to be her separate property, independent of the debts, control, or engagements of her husband, and she shall have as full power of dealing with and disposing of the same or any investment thereof as if she were unmarried, and her receipts alone shall be a good discharge for such wages, earnings, money, and property and the principal and interest of any investments thereof.

Wife's jewels,
implements of
trade and
agriculture, to
form part of
her separate
estate.

11 All jewels and all personal or household ornaments and wearing apparel belonging to a woman, married after the proclamation of this Ordinance, at the time of her marriage, and also all jewels, personal ornaments, and apparel suitable in respect of value to her rank and condition of life, which she may acquire during her marriage, whether by gift from her husband or otherwise, and all tools, implements, and appliances belonging to her during marriage, which may be requisite for the carrying on of any employment or trade in which she may be engaged separately from her husband, and all implements of husbandry, machinery, live and dead stock belonging to her during marriage and *bonâ fide* kept upon and employed for the cultivation or proper uses of any immovable property belonging to her for her separate estate, shall, subject and without prejudice to the trusts and provisions of any will or valid settlement affecting the same, belong to the woman for her separate estate independent of the debts, control, and engagements of her husband, and she shall have as full power of disposing of and dealing with the

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same by any lawful act *inter vivos* with the consent of her husband or by last will without such consent, as if she were unmarried.

12 If in any case, in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under the sentence or order of any competent court for a period exceeding two years, or if he shall be a lunatic or idiot, or his place of abode shall be unknown, or if his consent is unreasonably withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the district court of the district in which she resides, or in which the property is situate, for an order authorizing her to dispose of or deal with such property without her husband's consent; and such court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions, as the justice of the case may require; whereupon such consent shall, if so ordered and subject to the terms and conditions of such order, become no longer necessary for the valid disposition of or dealing with such property by such woman. Every such petition shall require a stamp of ten rupees, but no further stamps shall be required for any legal proceedings under this section. Such order shall be subject to appeal to the Supreme Court in the same manner and subject to the same rules and procedure as interlocutory orders of district courts. Provided, however, that in any case, when a separation *a mensa et thoro* has been decreed by a competent court, the consent of the husband shall not be necessary to enable the wife, so separated, to deal with or dispose of her property.

When husband's consent may be dispensed with.

13 It shall be lawful for any husband or wife, whether married before or after the proclamation of this Ordinance, notwithstanding the relation of marriage and notwithstanding the existence of any community of goods between them, to make or join each other in making, during the marriage, any voluntary grant, gift, or settlement of any property, whether movable or immovable, to, upon, or in favour of the other; but all property so granted, gifted, or settled, and all acquisitions made by a husband or wife out of or by means of the moneys or property of the other, shall, except as otherwise provided by section 11, be subject to the debts and engagements of each spouse in the same manner and to the same extent as if such grant, gift, settlement, or acquisition had not been made or occurred.

Power of spouses to settle or gift property during marriage.

14 Whenever any question shall arise between any woman, married after the proclamation of this Ordinance, or any person claiming under her and any creditor or alienee of her husband, as to the mode and time of the acquisition of any property claimed by such woman, it shall be incumbent

Burden of proof on the wife.

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upon such woman or person claiming under her to prove in what manner and at what time she became entitled to such property.

Disputes between husband and wife as to wife's estate to be settled summarily by district court.

16 If any question or dispute shall arise between any husband and wife (whether married before or after the proclamation of this Ordinance) relative to any property declared by this Ordinance to be the separate property of the wife, either party may apply by motion in a summary way to the district court of the district in which either party resides; and thereupon the district judge may make such order, direct such inquiry, and award such costs, as he shall think fit; and the district judge may, if either party so require, hear the application in his private room. Any order so made shall be subject to appeal to the Supreme Court, and for the purposes of such appeal shall be regarded as an interlocutory order of the district court. Every such motion shall require a stamp of ten rupees, but no further stamps shall be required for any other legal proceedings under this section.

Wife may effect a policy of insurance.

17 A married woman (whether married before or after the proclamation of this Ordinance) may after the proclamation of this Ordinance effect a policy of insurance upon her own life or the life of her husband for her separate use; and the same and all benefits thereof, if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

Husband may insure his life for the benefit of his family.

18 A policy of insurance, whether effected before or after the proclamation of this Ordinance, by any married man (whether married before or after the proclamation of this Ordinance) on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use and of his children or any of them, according to the interests so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or his creditors, or form part of his estate. Provided that if it shall be proved that the policy was effected and the premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

All other movable property of the wife to vest in the husband.

19 All movable property to which any woman, married after the proclamation of this Ordinance, shall be entitled at the time of her marriage or may become entitled during her marriage, shall, subject and without prejudice to any settlement affecting the same, and except so far as is by this Ordinance otherwise provided, vest absolutely in her husband.

Wife with separate property liable

22 A married woman having separate property adequate for the purpose shall be subject to all such liability for the maintenance of her children as a widow is now by law

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subject to for the maintenance of her children. Provided that nothing in this Ordinance shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

for the maintenance of her children.

23 Whereas doubts have been entertained whether the sixth section of the Placaat or Edict of the Emperor Charles V., dated the 4th day of October, 1540, relating to marriage settlements, is operative in this island, it is hereby enacted that the said section of the said Placaat has no force or operation in the said island.

Sixth section of Placaat of Charles V. of 1540 declared to have no operation in Ceylon.

III.—*Inheritance.*

24 The following sections of this Ordinance shall apply to the estates of such persons only as shall die after the proclamation of this Ordinance, and shall be then unmarried or (if married) shall have been married after the proclamation of this Ordinance.

Following sections to whom applicable.

25 Inheritance *ab intestato* to the immovable property in Ceylon of a person deceased shall be governed and regulated by the following provisions of this Ordinance wherever such person may have or have had his actual or matrimonial domicile. Inheritance *ab intestato* to the movable property of a person deceased shall be governed and regulated by the law of the country in which he had his domicile at the time of his death. Provided that when any person shall have his domicile in any part of this island, such domicile shall, so far as relates to the inheritance to his movable property, be deemed to be in the Maritime provinces. Provided also that if a person dies leaving movable property in Ceylon, in the absence of proof of his domicile elsewhere, the inheritance to such property shall be governed by the following provisions of this Ordinance.

Inheritance to immovable property in Ceylon to be governed by this Ordinance. Inheritance to movable property to be governed by the law of the domicile.

Proviso.

26 When any person shall die intestate as to any of his or her property, leaving a spouse surviving, the surviving spouse shall inherit one-half of the property of such person.

Surviving spouse inherits one-half.

27 Subject to the right of the surviving spouse in the preceding section mentioned, the right of inheritance is divided in the following order as respects (1) descendants, (2) ascendants, (3) collaterals.

Order of devolution of property.

28 Children, grandchildren, and remoter descendants are preferrent to all others in the estate of the parents; all the children take equally *per capita*, but the children or remoter issue of a deceased child take *per stirpes* or by representation.

Preferential right of children.

29 The children and remoter descendants failing, the inheritance of the deceased goes to his father and mother in case they are both alive; but if only one of the parents be alive, the surviving parent takes half, and the brothers and sisters of the deceased of the full blood, and the issue of any deceased brother or sister of the full blood, by representation, and the brothers and sisters of the half blood who are related to the intestate by the side of the deceased parent, and the issue of any such deceased brother or sister of the half blood, by

When descendants fail.

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representation, take the other half. In case there is no full or half brother or sister alive at the death of the deceased, the surviving parent inherits the whole, although there may be children or other issue of deceased brothers or sisters.

In case of
parents failing.

30 Father and mother both failing, the property of the intestate goes to his brothers and sisters, whether of the whole or half blood, and their children and other issue by representation.

Division in
case of half
brothers and
sisters.

31 The division however in the case of half brothers and sisters is as follows: The inheritance is divided into two parts: the one-half the full brothers and sisters and the issue of such as are deceased by representation divide with the half brothers and sisters of the father's side and the issue of such as are deceased by representation; and the other half they divide with those of the mother's side and the issue of such as are deceased by representation; but if there are only half brothers and sisters of such issue of one side, the full brothers and sisters and the issue of deceased full brothers and sisters by representation take then in the first place one-half of the property, and divide the other half with the half brothers and sisters and their issue by representation.

When full
brothers and
their children
fail.

32 When full brothers and sisters or their children or remoter issue fail, and there are half brothers' and sisters' children or remoter issue on both sides alive, then one-half of the property goes to the half brothers and sisters or their children and remoter issue by representation on the father's side, and the other half to the half brothers and sisters on the mother's side and their children and remoter issue by representation.

In case of half
brothers only
on one side.

33 In case all the half brothers and sisters, their children and remoter issue, are related to the intestate on one side only, they take the whole of the inheritance, unless there be a grandfather or grandmother or higher ascendant yet alive, related to the intestate on the other side, in which case such half brothers and sisters, their children and remoter issue by representation take one-half only, and the next ascendants *per capita* the other half.

Where all who
succeed are
nearly equal in
degree.

34 Except when otherwise expressly provided, if all those who succeed to the inheritance are equally near in degree to the intestate, they take *per capita* and not *per stirpes*.

All persons
above
enumerated
failing.

35 All the persons above enumerated failing, the inheritance goes first to the nearest in the ascending line *per capita*, although it should happen that on the one side both the grandfather and the grandmother, and on the other side only one of these parents, should be alive. Afterwards to uncles and aunts and the children of deceased uncles and aunts *per stirpes*. Uncles and aunts failing, then to their children and also great-uncles and aunts with them *per capita*.

All persons above
enumerated
failing, surviving
spouse takes.

36 All the persons above enumerated failing, the entire inheritance goes to the surviving spouse, if any, and if none, then to the next heirs of the intestate *per capita*.

37 Illegitimate children inherit the property of their intestate mother, but not that of their father or that of the relatives of their mother. Where an illegitimate person leaves no surviving spouse or descendants, his or her property will go to the heirs of the mother, so as to exclude the Crown.

Illegitimate children.

38 If any one dies intestate without heirs, his or her estate escheats to the Crown. If, however, any heirs can be found, even beyond the tenth degree, they take the inheritance.

On failure of heirs Crown takes.

39 Children or grandchildren by representation becoming with their brothers and sisters heirs to the deceased parents are bound to bring into hotchpot or collation all that they have received from their deceased parents above the others either on the occasion of their marriage or to advance or establish them in life, unless it can be proved that the deceased parent, either expressly or impliedly, released any property so given from collation.

Collation by children or grandchildren advanced by intestate.

40 In all questions relating to the distribution of the property of an intestate, if the present Ordinance is silent, the rules of the Roman-Dutch law as it prevailed in North Holland are to govern and be followed.

Quae omnia to be governed by law of North Holland.

4th January, 1877.
