

Women's Legal Landmarks

*Celebrating the History of Women and Law
in the UK and Ireland*

Edited by
Erika Rackley
and
Rosemary Auchmuty

• H A R T •

OXFORD • LONDON • NEW YORK • NEW DELHI • SYDNEY

HART PUBLISHING
Bloomsbury Publishing Plc
Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK

HART PUBLISHING, the Hart/Stag logo, BLOOMSBURY and the Diana logo are
trademarks of Bloomsbury Publishing Plc

First published in Great Britain 2019

Reprinted 2019

Copyright © The editors and contributors severally 2019

The editors and contributors have asserted their right under the Copyright, Designs and Patents
Act 1988 to be identified as Authors of this work.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means,
electronic or mechanical, including photocopying, recording, or any information storage or retrieval system,
without prior permission in writing from the publishers.

While every care has been taken to ensure the accuracy of this work, no responsibility for loss or damage
occasioned to any person acting or refraining from action as a result of any statement in it can be
accepted by the authors, editors or publishers.

All UK Government legislation and other public sector information used in the work is Crown Copyright ©.
All House of Lords and House of Commons information used in the work is Parliamentary Copyright ©.
This information is reused under the terms of the Open Government Licence v3.0 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>) except where otherwise stated.

All Eur-lex material used in the work is © European Union,
<http://eur-lex.europa.eu/>, 1998–2019.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication data

Names: Rackley, Erika, editor. | Auchmuty, Rosemary, editor.

Title: Women's legal landmarks : celebrating the history of women and law in
the UK and Ireland / edited by Erika Rackley and Rosemary Auchmuty.

Description: Oxford, UK ; Portland, Oregon : Hart Publishing, 2019.

Identifiers: LCCN 2018034445 (print) | LCCN 2018035208 (ebook) |
ISBN 9781782259787 (Epub) | ISBN 9781782259770 (hardback : alk. paper)

Subjects: LCSH: Women—Legal status, laws, etc.—Great Britain—History. |
Women—Legal status, laws, etc.—Ireland—History.

Classification: LCC KD734 (ebook) | LCC KD734 .W664 2018 (print) | DDC 342.4108/78—dc23

LC record available at <https://lcn.loc.gov/2018034445>

ISBN: HB: 978-1-78225-977-0
ePDF: 978-1-78225-979-4
ePub: 978-1-78225-978-7

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall

To find out more about our authors and books visit www.hartpublishing.co.uk.
Here you will find extracts, author information, details of forthcoming events
and the option to sign up for our newsletters.

Married Women's Property Act 1964

SHARON THOMPSON

Contemporaneous commentators on the Married Women's Property Act (MWPA) 1964 described it as 'one more example of an atomised reform of one isolated aspect of the law'.¹ At first glance this appears correct; section 1 comprises only 71 words. Its effect was simple: it enabled a wife to share housekeeping money (and any property derived from that money) equally with her husband, when previously it was legally considered to be her husband's money only and so reverted back to him. Yet in spite of its brevity and apparently narrow scope, the Act was hugely significant, as for the first time, it enabled married women without independent income to acquire their own money.

I. Context

The MWPA 1964 was a landmark in married women's economic independence, because it brought the problems associated with the principle of separation of property into focus. Whilst the **Married Women's Property Acts** (MWPAs) of 1870 and 1882² made it a *possibility* for married women to be financially independent by enabling them to legally own property in their own right, the *reality* for most married women throughout most of the twentieth century prevented this possibility from being realised.³ In the mid-twentieth century, most women gave up paid employment on marriage, and those who did work tended to occupy low-paid jobs.⁴ These material inequalities were in many ways reinforced as a result of the sexual division of labour within the family.⁵ Work in the home was almost exclusively the wife's domain and was unpaid. Although this work did not directly produce the household earnings, it was crucial to the generation of this income because it enabled the breadwinning husband to work in the public sphere. However, this contribution was not recognised in law. The principle of separate property meant that only the husband could have a legal interest in the money and property he earned. Though money earned by a wife would also belong to her outright, the little money she could earn was generally spent

¹ Olive Stone, 'Married Women's Property Act 1964' (1964) 27 *Modern Law Review* 576, 576.

² **Married Women's Property Act 1882**.

³ **Married Women (Restraint Upon Anticipation) Act 1949**.

⁴ Ferdynand Zweig, *Women's Life and Labour* (Gollancz, 1952).

⁵ Sandra Fredman, *Women and the Law* (Clarendon Press, 1997) 108.

on food, clothing and other consumables for the family.⁶ This also left married women economically vulnerable on divorce, as until 1970⁷ they would be dependent on maintenance from their ex-husbands, and this was not always paid. In short, married women had no claim to property directly earned by their husbands and little opportunity to accumulate property in their own right.

The hardship resulting from the economic position of married women in the mid-twentieth century was striking in cases concerning ownership of housekeeping money. In particular, the situation of Mrs Blackwell⁸ became a popular narrative for advocates of reform. Mrs Blackwell had approximately £103 of housekeeping savings standing to her credit in the Oxford and District Co-operative Society, but was not permitted by the court to keep any of it when she separated from her husband. Even though she had brought in lodgers to help her husband pay off the mortgage on their home and had shopped at the Co-op in order to receive dividends, Mrs Blackwell was left no money of her own. As Labour MP Edith Summerskill wrote in her memoirs:

Mrs Blackwell after sixteen years of unremitting toil on behalf of her family was not entitled to a penny for her services. She was a pathetic little figure in her basement room when I visited her in London ... She was helpless and hopeless, a victim of a legal system which still in the twentieth century treats the wife as a chattel of her husband.⁹

Thus, though the MWPA in 1870 and 1882 might have formally bestowed on a married woman individual legal personality on marriage, she was by no means equal to her husband because, even if she managed household finances that enabled the mortgage on the family home to be repaid, that home could not belong to her unless she was named on the documents of title, and wives rarely were. She could act only as her husband's agent and in no other capacity.¹⁰ Mrs Blackwell's counsel argued that the law had left her worse off than a paid housekeeper.¹¹ Summerskill also noted that the wife could have spent the housekeeping money on herself instead of having the prudence to invest it.¹² In fact, Goddard LJ, one of the judges in the case, was worried the opposite would happen: that if women were permitted to save out of their housekeeping allowance, and then keep the proceeds, 'women would be tempted to give their husbands tinned meat rather than roast meat'.¹³

Perhaps the most shocking aspect of Mrs Blackwell's case was that the hardship she experienced was by no means exceptional.¹⁴ As Summerskill observed, 'different versions of the Blackwell case [appeared] in our newspapers every day'.¹⁵ Put simply, the judiciary made it clear in *Blackwell* that the MWPA 1882 could not and would not be interpreted to recognise the value of married women's unpaid work in the home.¹⁶ Significantly, the MWPA 1964

⁶ *ibid* 48.

⁷ The Matrimonial Proceedings and Property Act 1970 widened the scope of financial provision for the non-moneyed spouse on divorce.

⁸ *Blackwell v Blackwell* [1943] 2 All ER 579.

⁹ Edith Summerskill, *A Woman's World* (Heinemann, 1967) 145.

¹⁰ Mrs Blackwell's solicitor was **Carrie Morrison**, the first woman admitted as a solicitor in England and Wales.

¹¹ 'Mrs Blackwell and Mrs 1964', *The Catholic Citizen* (London, 15 June 1964).

¹² Summerskill, n 9 above.

¹³ *ibid* 144, referring to Goddard LJ's comments in *Blackwell v Blackwell* (n 8 above).

¹⁴ See *Preston v Preston* 1950 SLT 196; *Hoddinott v Hoddinott* [1949] 2 KB 406 (where the wife was held to have no legal interest in winnings from a joint investment of husband and wife).

¹⁵ HL Deb, 19 November 1952, vol 507 col 1874.

¹⁶ Fredman, n 5 above, 3.

was the first time such work could be legally recognised as having economic value. But, as Rosemary Auchmuty has remarked, the feminist activism behind such reform, particularly during the first half of the twentieth century, does not feature in contemporary accounts and has instead been 'deliberately erased or reconstructed in safe, non-radical forms with the feminist agency removed'.¹⁷ Such reconstruction is clear in the context of the MWPA 1964. Indeed, the impetus behind the Act is often documented as being the Report of the Royal Commission on Marriage and Divorce in 1956 alone,¹⁸ with no mention of the Married Women's Association (MWA), which provided evidence crucial to the Royal Commission's report, raised consciousness (inside and outside Parliament) about the plight of women such as Mrs Blackwell, and even financed Mrs Blackwell's (unsuccessful) appeal.

The MWA was formed in 1938 to promote the rights of housewives and mothers and included prominent post-first-wave feminists such as **Helena Normanton**, Vera Brittain, Helen Nutting, Edith Summerskill and Juanita Frances (who founded the Association). One of the specific aims of the Association was to promote legislation to regulate the financial relations between husband and wife as between equal partners,¹⁹ and so it sought to challenge the court's narrow view of wives as mere agents of their husband's money, with no legal entitlement to it. Their strategy was to make women aware of how the law affected them and, in particular, of women's economic vulnerability as a result of being unable to save housekeeping money. In addition, the Association alerted the wider public to the urgent need for legal reform in its magazine *Wife and Citizen*, and by political lobbying. Undoubtedly, however, the Association's most powerful ally in driving the introduction of the MWPA 1964 was Labour MP and self-identified feminist Edith Summerskill, who was its first president.

II. The Landmark

The first legislative attempt to reform the issue of married women and housekeeping money was the Women's Disabilities Bill 1952. Edith Summerskill moved the second reading of the Bill, viewing it as an attempt 'to remedy the injustice suffered by women in the position of Mrs Blackwell'.²⁰ Wider in scope than the eventual MWPA 1964, it comprised three clauses addressing issues affecting married women on relationship breakdown and unmarried mothers when maintenance orders were not observed.²¹ The second clause was similar to the MWPA finally enacted, providing that housekeeping savings could be divided equally between husband and wife, or in any proportion the court considered just.²²

¹⁷ Rosemary Auchmuty, 'Feminists as Stakeholders in the Law School' in Fiona Cownie (ed), *Stakeholders in the Law School* (Hart Publishing, 2010) 35–64, 49.

¹⁸ Law Commission, *Transfer of Money Between Spouses – the Married Women's Property Act 1964* (Law Com Working Paper No 90, 1985) [4.1].

¹⁹ Records of the Married Women's Association: <http://discovery.nationalarchives.gov.uk/details/rd/9d19c2e7-12c7-44ab-b73a-abfd80593390>.

²⁰ *ibid.*

²¹ Specifically, clause one of the Bill stated that if a man defaulted in payment of a maintenance order, and was employed, the court could make an order requiring his employer to make payments to the court in respect of the money due to the applicant.

²² Clause 2 also provided that if forced to leave the family home, the wife could have use of household goods and furniture, and in some cases the court could grant tenancy rights to the wife in respect of the family home.

It would be an understatement to say that the Women's Disabilities Bill did not receive a warm reception during its second reading in the House of Commons. There was significant resistance to the prospect of a wife having a share in housekeeping money. Summerskill's perspective on this debate, as recounted in her memoirs, is particularly interesting. In her view the suspicion in respect of this Bill was not dissimilar to the attitudes of those opposed to the MWPA's 1870 and 1882. The battle against coverture might have been fought in a different era, but the prejudice surrounding reform of women's rights 70 years later was much the same. As she incisively stated: 'I have found nothing more calculated to catch a prejudiced man off his guard than a speech advocating the further emancipation of women.'²³ Her Bill was called 'ultra-feminist', 'grossly unpractical', and anticipated to 'introduce strife and disharmony into the home.'²⁴ Indeed, it is farcical that, like those in opposition to the MWPA's 1870 and 1882, there appeared to be more concern for the husband's meals than for advancing women's rights,²⁵ as Members commented that reform would lead to unpleasant dinners and displeasing breakfasts if the family business could be 'thrashed out before a bench of magistrates.'²⁶ Yet even though, as Summerskill observed, 'the anti-feminists had gathered in force against [her];'²⁷ she was not without support on this matter. Fifty-four Members voted in favour of the Bill, and in the public gallery members of the MWA filled almost every seat.²⁸

Though the Bill did not pass, it was a precursor to the Report of the Royal Commission on Marriage and Divorce led by law lord Fergus Morton, four years later. The Commission proposed that 'savings made from money contributed by either the husband or the wife or by both for the purpose of meeting housekeeping expenses'²⁹ should belong to each spouse in equal shares. Importantly, the Commission stated that its recommendation was based on witnesses' evidence, provided in part by the MWA, that exposed the 'real hardship' for wives who had saved housekeeping money for years only to have this money belong in law to the husband.³⁰

The Royal Commission's report undoubtedly led to more widespread public consciousness of the plight of married women like Mrs Blackwell. This encouraged Summerskill to make another attempt at reform, and she drafted one of the shortest Bills in history. Titled the Married Women's Savings Bill,³¹ it consisted of 25 words: 'If a wife makes savings out of what her husband gives her for housekeeping, half of any money so saved shall belong to her absolutely'. The change in temperature in the House of Lords towards this Bill was plain, and 11 years after the Women's Disabilities Bill, the Married Women's Savings Bill passed its second reading in the House of Lords.³² It could not progress further because the Parliamentary session ran out of time, but before reintroducing the Bill in the new session

²³ Summerskill, n 9 above, 148.

²⁴ HC Deb, 25 April 1952, vol 499 col 922 (Mr Bell).

²⁵ Summerskill, n 9 above.

²⁶ HC Deb, 25 April 1952, vol 499 col 975 (Mr Doughty).

²⁷ HL Deb 19 November 1952, vol 507 col 1874.

²⁸ Summerskill, n 9 above, 150.

²⁹ Royal Commission on Marriage and Divorce, *Royal Commission on Marriage and Divorce: Report 1951-1955* (HM Stationery Office, 1956) [701].

³⁰ *ibid* [645] and [700].

³¹ If the wording of this particular Bill had been introduced it would have been the shortest English statute in history. This is currently the Parliament (Qualification of Women) Act 1918, which consists of 27 words.

³² Summerskill, n 9 above, 156.

of Parliament, Summerskill had it redrafted as the Married Women's Property Bill 1964 to incorporate the language of the Royal Commission's report, so that the housekeeping money would belong to the husband and wife in equal shares instead of granting the wife a one-half share absolutely. However, the wording differed from the report because it was not gender-neutral, only granting the wife an equal share in housekeeping money derived from the husband, and not vice versa.

The Bill passed successfully through the House of Lords and was moved by Douglas Houghton MP in the House of Commons. Procedurally, Private Members' Bills only require one dissenting member of the House in order to obstruct them. The first time the Married Women's Property Bill was called it was defeated by a single, anonymous objector. Therefore the following week, Summerskill described bracing herself 'waiting for the fatal word [object] like some poor unfortunate creature waiting for the executioner's axe, with an iron determination not to wince when the blow fell'.³³ But no one objected and the Bill was passed. Summerskill was successful in introducing reform that would enable married women to save in their own right.

III. What Happened Next

One of the major criticisms of the MWPA in 1964 was that it discriminated against men, because it only applied to housekeeping money received by the wife, and therefore differed from the recommendations of the Royal Commission in 1956.³⁴ But one of the powerful aspects of the MWPA was that it was *not* gender-neutral, because the issue it addressed was an issue that affected married women in a way that it *did not* affect married men. It was almost exclusively women who were responsible for the unpaid work in the home, and who were financially vulnerable as a result of this. Thus, the MWPA's discriminatory focus was arguably *crucial* in highlighting the sexual division of labour and the limitations of separate property. Though the Act did not protect housewives who did not receive any allowance from their husbands,³⁵ the spirit of the legislation – that *both* spouses are entitled to the financial fruits of the marital partnership – paved the way for the evolving divorce law reform in the next decade.

Not all feminists agreed that a focus on married women's rights to housekeeping allowance was an appropriate response to the question of economic equality between husband and wife. Some members of the MWA contended that all property in marriage should be divided equally, as they believed marriage to be a joint enterprise comprising equally important financial and non-financial contributions. Helena Normanton, however, submitted evidence on the Association's behalf to the Royal Commission of Marriage and Divorce³⁶ arguing that wives should be paid an allowance from the family income for their work in the home but should not be entitled to the resources of their husband, and could be

³³ Stone, n 1 above, 158.

³⁴ John Dewar, *Law and the Family* (Butterworths, 1989) 119.

³⁵ Otto Kahn-Freund, 'Matrimonial Property – Some Recent Developments' (1959) 22(3) *Modern Law Review* 241–72, 249.

³⁶ She later withdrew this evidence and submitted it independently. Following this, the Married Women's Association resubmitted a different memorandum of evidence to the Commission.

penalised if their housekeeping was wilfully negligent.³⁷ This angered members who felt that Normanton's evidence portrayed the wife as an 'employed subordinate, and not a partner' in marriage.³⁸ This caused irreparable tensions in the MWA and led to Normanton resigning and establishing the Council of Married Women in 1952. Interestingly, Normanton's view that wives should be provided with a housekeeping allowance was reflected in the Wages for Housework campaigns of the 1970s and continues to divide feminists today.

IV. Significance

The MWPA 1964 was a 'major triumph'³⁹ for the MWA. Twenty years after *Blackwell*, married women had a legal right to a half-share of housekeeping money, thus recognising that this money had often been generated through wives' own efforts anyway.⁴⁰ But the members of the Association were clear that the Act represented only slight progress towards economic equality in marriage.⁴¹ In the words of Olive Stone (lecturer in law at the LSE and campaigner for married women's property rights), the amount of money wives could acquire under the Act would likely have been very little.⁴² Nevertheless, she recognised that the Act was important because it had established a principle based on equality. As a result, it would be short-sighted to criticise the MWPA 1964 for not doing enough to address the financial position of married women. The strategy for reform adopted by the MWA was *necessarily* incremental, because the prospects of further legislation at that time were unrealistic.⁴³ Edith Summerskill's attempts to achieve broader reform for women in the Women's Disabilities Bill 1952 had been met with considerable resistance, but this resistance decreased substantially when she drafted the Married Women's Property Bill, because it was short, pragmatic, and sought to erode only one cause of women's economic inequality in marriage.⁴⁴

The significance of this incremental reform cannot be overstated, because it led to more radical discussions of automatic equal division of property between husband and wife (a central aim of the Married Women's Association). For instance, in 1985 the Law Commission produced a Working Paper centred on dramatically extending the principle of equal division in the MWPA 1964, by proposing a rule whereby any money transferred by either spouse would immediately belong jointly to husband and wife.⁴⁵ Although this rule was never implemented, the Paper triggered a broader conversation around financial equality between spouses at this time, and this was directly facilitated by the MWPA 1964.

³⁷ 'Not Properly Understood: Mrs Normanton Defends Her Report', *Beckenham Advertiser*, 13 March 1952.

³⁸ 'Wives hope ex-officials will return', *Daily Dispatch*, 3 April 1952.

³⁹ "Only slight progress" in the fight for equality', *Hampstead Highgate Express*, 11 December 1964.

⁴⁰ For instance, some of the money invested by Mrs Blackwell comprised profits from her work taking lodgers into the home.

⁴¹ n 39 above.

⁴² Stone, n 1 above, 580.

⁴³ Law Commission, n 18 above, [4.4].

⁴⁴ Indeed, the Royal Commission's 1956 recommendation on housekeeping savings was the furthest extent to which it would go to improve economic equality in marriage: Carol Smart, *The Ties that Bind* (Routledge, 1984) 38.

⁴⁵ Law Commission, n 18 above.

As a result, the MWPA 1964 forms an important, albeit unrecognised part of the historical context surrounding current principles of financial provision on divorce.⁴⁶

Further Reading

- Sandra Fredman, *Women and the Law* (Clarendon Press, 1998).
- Olive Stone, 'Married Women's Property Act, 1964' (1964) 27 *Modern Law Review* 576–80.
- Edith Summerskill, *A Woman's World* (Heinemann, 1967).

⁴⁶The MWPA 1964 was repealed in Scotland by the Family Law (Scotland) Act 1985. The Act remains in force in England and Wales. The Equality Act 2010, s 200 (not currently in effect) amends the MWPA 1964 prospectively to make it gender neutral. The Family Law (Property and Maintenance) Bill 2005 sought to extend the Act's provisions to civil partners but was not passed. The Act was never introduced in Northern Ireland.