

Resource 16:

## New York State Married Women's Property Law

According to the doctrine of coverture, wives were legally “covered” by their husbands. Single women and widows had more rights, but married women could not make a contract, own property, or decide how family money was spent. Legally, they did not exist. (See **Resource 1.**)

Things began to change in the nineteenth century, when state laws gradually gave married women more rights. As of 1809, Connecticut women could write a will. In the mid-1830s, Polish immigrant Ernestine Rose fought for a New York State law, coordinating a campaign with Elizabeth Cady Stanton and Pauline Wright. Mississippi passed the nation's first married women's property law in 1839. The New York efforts paid off in April, 1848, when the state enacted a law that became a model for other states.

These laws were not written out of a sense of fairness to women. They came about because men's lives were changing. In most states after the Revolution, only white, male, property owners could vote. But increasingly after 1800, states



Ernestine Rose, 1881. Schlesinger Library on the History of Women in America, Radcliffe Institute for Advanced Study, Harvard University.

passed new laws that abolished the property requirements. By 1840, nearly all white men could vote. At the same time the economy was changing, with more periods of boom and bust. Even poor men wanted a way to protect their assets, and one way to do that was to put them in their wives' names. This, and agitation from women, drove the writing of married women's property laws. Three months after the passage of New York's law, the first women's rights convention, organized by Elizabeth Cady Stanton, took place in Seneca Falls. Stanton later wrote: “I think all women who attended the convention felt better for the statement of their wrongs, believing that the first step [New York's new property law] had been taken to right them.”

“Real property” refers to land and buildings. “Personal property” describes other tangible items

-- clothing, furniture, books, vehicles. For middle class or wealthy married women, both categories could be sizable, and New York's 1848 law protected their rights to these possessions. But the state's poorer women were more likely to work than to own a house or grand furnishings, and for them, the 1848 law offered little protection. Their husbands still legally controlled their wages until an 1860 New York law specified that “the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name.” And regardless of family wealth, in the rare cases where couples divorced, fathers were granted custody of the children.

### Discussion Questions

- ★ Why is this a landmark moment in the history of women's rights?
- ★ What new opportunities were now available to a woman who owned property?

**Sources:** Sara M. Evans, *Born for Liberty: A History of Women in America* (New York: Free Press Paperbacks, 1997); Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998).

## An Act for the Effectual Protection of the Property of Married Women

Passed April 7, 1848.

The People of the State of New York, represented in Senate and Assembly do enact as follows:

Sec. 1. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents issues and profits thereof shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female.

Sec. 2. The real and personal property, and the rents issues and profits thereof of any female now married shall not be subject to the disposal of her husband; but shall be her sole and separate property as if she were a single female except so far as the same may be liable for the debts of her husband heretofore contracted.

Sec. 3. It shall be lawful for any married female to receive, by gift, grant devise or bequest, from any person other than her husband and hold to her sole and separate use, as if she were a single female, real and personal property, and the rents, issues and profits thereof, and the same shall not be subject to the disposal of her husband, nor be liable for his debts.

Sec. 4. All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

1848 New York Laws 307, ch. 200.

Married Women's Property Laws, the Law Library of Congress. [https://memory.loc.gov/ammem/awhhtml/awl3/property\\_law.html](https://memory.loc.gov/ammem/awhhtml/awl3/property_law.html) (accessed by M. Waters, 10-28-2016). October 28, 2016 by M. Waters).