

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 44 (G. S. ch. 69).

MARRIED WOMEN.

At common law, marriage conferred on husband absolute ownership of wife's personal property, the rents and profits of her real estate, and curtesy in the realty on birth of child. The corpus of the realty could not be touched. When trust estates originated (A. D. 1370), such property was vested in trustee for benefit of wife to avoid these common-law marital rights of husband. Before the invention of fine and recovery these trusts were limited to personal property and rents and profits of realty, because this only passed to the husband; the corpus being protected by wife's disability to contract or make a will. When fine and recovery were adopted to bar descent, the realty was included in the trust. Courts of equity enforced this trust and required the separate estate to follow the directions contained in the instrument creating the trust. 1 Beav. 1; 4 Myl. & Cr. 390; 18 N. Y. 270. If there were no directions, she could dispose of it as if unmarried, this being the object of the trust (2 Atk. 383; 1 Ves. Sr. 163, 517; 2 Ves. 190; 3 Bro. C. C. 346); the personalty by deed, will or act *inter vivos* (3 Bro. C. C. 8; 9 Ves. 520); and realty by will or deed (2 Ves. Sr. 190; 32 Beav. 353; 2 Bro. C. C. 534; 1 W. & T. Leading Cas. 655); and that such estate was liable for her debts and contracts on the ground that, as she owned it as *feme sole*, she could dispose of it as owner, and if she could dispose of it she could charge it with her debts and general engagements. 1 Ves. Jr. 277; 2 Ves. Sr. 193; 1 Bro. C. C. 16; 15 Ves. 593; 17 Ves. 365; 4 Bro. C. C. 19. This was modified, that the *intention* to charge must be *expressed* by the *feme covert* (2 Ves. Jr. 150; 2 Atk. 379; 3 Madd. 389); and subsequently repudiated. 4 Sim. 82; 1 Cr. & Ph. 48; 2 Wh. & Tud. L. Cas. 502; 4 Bro. C. C. 326; 8 Ves. 185; 16 Ves. 126. From this the other rules followed—that restrictions on alienation must be expressed and not implied, because the *jus disponendi* is an incident of ownership (1 Ves. Jr. 189; 3 Bro. C. C. 340; 11 Ves. 222; 38 Eng. Ch. 375); and the granting of one mode of disposition does not prohibit any other mode (11 Ves. 222; 14 Ves. 302; 4 Beav. 319; 3 Bro. C. C. 565); and such restrictions operate during coverture only (6 Eng. Ch. 141; 18 Eng. Ch. 377; 4 Myl. & Cr. 390); though there are cases against this. 3 Atk. 541; 3 Ves. 437; 4 Ves. 129; 5 Ves. 692; 9 Ves. 524.

New York adopted the English doctrine as to alienation, but not as to charging the estate, following the modified doctrine that the *intention to charge must exist* (or the debt contracted for benefit of separate estate or for her own benefit on credit of the estate). 23 Barb. 371; 18 N. Y. 283; 22 N. Y. 451; 58 N. Y. 80; 64 N. Y. 217. This is followed in Kentucky, New Jersey, North Carolina and Maryland. In Alabama, Missouri, Connecticut, Wisconsin, Georgia and Vermont the English doctrine of *jus disponendi* and power to charge prevails. In South Carolina, Pennsylvania, Tennessee, Mississippi and Rhode Island the American doctrine prevails, namely, that a married woman has no power but such as given in the instrument, deed or statute creating the estate, and cannot charge, incumber or alien it further or otherwise than as such instrument allows.

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Sections.

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SEC. 3865. **Separate estate.**— All property, real, personal and mixed, and choses in action, owned by any married woman, or owned or held by any woman at the time of her marriage, shall continue to be her separate property notwithstanding such marriage; and any married woman may, during coverture, receive, take, hold, use and enjoy property of any and every description, and the rents, issues and profits thereof, and all avails of her contracts and industry, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried.

1869, ch. 56, § 1: "An act to amend ch. 69 of G. S., entitled Married Women." Approved March 5, 1869. Section 7 of this act provides that it take effect and be in force on and after

June 1, 1869, and shall stand instead of and supersede chapter 69 of General Statutes. 22 M. 29, 34; 27 M. 297; 29 M. 432; 34 M. 369; 36 M. 4.

G. S. ch. 69, §§ 1, 2, 3, 6, 7, 8, superseded by this law, provided that all property owned at the time of, and that which came by descent, during marriage; and obtained by conveyance, devise or bequest direct, without intervention of trustee, from husband or otherwise, and the rents, profits and increase, and her wages, should be held by her for her sole and separate use; the *jus disponendi* of the corpus with consent of husband only. In all other respects, with respect to the *res*, she had the same rights and powers, the same remedies and obligations, with power to sue and be sued for any contract or wrong as if unmarried.

The object of this section and all such enabling statutes is to abolish the husband's interest in wife's estate existing at common law, the doctrine of the wife's equity, and the husband's rights at common law as distributee and administrator, except in so far as regulated by statutes on descents and distribution, but not to interfere with curtesy; hence the statute merely turned the equitable into a legal estate, dispensing with trustee or written instrument (18 N. Y. 279; 59 Ill. 515), and does not remove wife's common-law incapacity to contract, but recognizes the equity power to charge as formerly with the separate equitable estate (18 N. Y. 265; 39 Barb. 194; 35 N. Y. 507; 37 N. Y. 35); thus requiring judgments *in rem*, not *personam*. 21 Barb. 549; 12 How. 333; 3 Sandf. 109. The doctrine of alienation and of charging is the same as before the statute, except as modified by the next section.

Earnings of wife belonged to husband at common law, but to wife in equity if labor performed with his consent. 1 Roper, H. & W. 140; 2 Sto. Eq. §§ 1385-1387. The same rule if she conducted business. 2 Br. H. & W. 293; 2 Sto. Eq. § 1385. But husband must consent, and this section merely turned the equitable into a legal doctrine. If the business is conducted with wife's separate estate equity will hold husband as trustee, and he may share in profits for his skill and capital. 2 Sto. Eq. § 1385; 8 Ves. 599; 24 Eng. C. L. 514; 2 Br. H. & W. 293.

SEC. 3866. **Power to contract—Liability for torts.**—A married woman shall be bound by her contracts, and responsible for torts committed by her, and her property shall be liable for her debts and torts, to the same extent as if she were unmarried. Any married woman shall be capable of making any contract, either by parol or under seal, which she might make if unmarried, and shall be bound thereby.

Husband join in conveyance.—Except that no conveyance or contract for the sale of real estate, or of any interest therein, by a married woman, other than mortgages on lands to secure the purchase-money of such lands, and leases for terms not exceeding three years, shall be valid, unless her husband shall join with her in such conveyance, save as provided in section 1 five of this chapter as amended.

Guardians to join.—† *Provided*, that if her husband is an insane person, she may make such conveyance or contract by joining therein with the guardian of such insane person. †

Curtesy.—And no right to an estate by the curtesy shall attach as against a mortgage given by a married woman to secure the purchase-money of the land so mortgaged.

Conveyance after divorce decree.—**Provided further*, that any deed, mortgage or other conveyance of land in this state, heretofore or hereafter made, in good faith, for a valuable consideration, by an adult woman without any husband having joined therein, but after judgment of any district court of this state, remaining in full force, adjudging the nullity of her marriage or granting her a divorce from bonds of matrimony, or from bed and board, shall be as valid and effectual, to all intents and purposes, as if she had never been married, any defect in the service of the summons or complaint in the action for such relief or divorce to the contrary notwithstanding; provided, nevertheless, such deed, mortgage or other conveyance was made after expiration of the time allowed by law to appeal from such judgment; and, provided, further, that the defendant in such divorce proceedings actually received the summons and complaint, or had, before entry of such judgment, actual knowledge of the pendency of such action, so that he could have defended the same, which shall appear by the records in the case, or be made to appear to the satisfaction of the court. Nothing herein contained shall in any manner affect the rights of the parties to any action now pending in any of the courts of this state.

1869, ch. 56, § 2, as amended 1878, ch. 25 (March 11); 1889, ch. 103 (April 24). Amendment 1889 below *. Amendment 1878 between †. The reference¹ is to § 3878, *post*. 20 M. 219; 23 M. 337; 34 M. 274; 37 M. 62.

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SECS. 3867-3870.]

MARRIED WOMEN.

G. S. ch. 69, § 4, provided for curtesy in the separate estate, and husband's right to administer when wife died intestate, if the *jus disponendi* was not otherwise directed by the instrument creating the estate.

With the exception named in this and the next section the intention was to confer the power to make any contract; to be bound by any contract; and her property liable therefor, as *feme sole*. The preceding section expressly creates a *separate estate* for a class under disabilities, not a *feme sole* estate. This section assumes to make the separate estate liable for *feme sole* contracts. Conferring *feme sole* power to contract and the liability therefor does not create a *feme sole* estate. A *separate estate* is not a *feme sole* estate. To be liable for *feme sole* contracts the estate should be *feme sole*, because the power and subject-matter are then co-equal; hence the power to contract is *sub modo*, and the separate estate is charged or alienated as before the statute. The *obiter dictum* in *Dobbins v. Cordiner*, 41 M. 169, is against this, where the court, stating the statutory power to contract, assumes and declares that the power is full and complete.

SEC. 3867. Contracts between husband and wife.—No contract between a husband and wife, the one with the other, relative to the real estate of either or any interest therein, shall be valid, nor shall any power of attorney or other authority from the one to the other to convey real estate or any interest therein be of any force; but in relation to all other subjects either may be constituted the agent of the other, or contract each with the other, as fully as if the relation of husband and wife did not exist. But in all cases where the rights of creditors or purchasers in good faith come in question, the husband shall be held to have notice of the contracts and debts of his wife, and the wife shall be held to have notice of the contracts and debts of her husband, as fully as if a party thereto.

1869, ch. 56, § 4. 34 M. 109, 369; 32 M. 229; 27 M. 297; 35 M. 293; 36 M. 4. The common law prohibited all contracts between husband and wife, but equity frequently sustained conveyances from husband to wife. 1 Th. Co. Litt. 130; 2 Sto. Eq. § 1374; 7 John. Ch. 63. And under statute of uses, covenanting with a third person in consideration of love and affection to stand seized to wife's use will vest the legal estate in the wife. 2 Lom. Dig. 24. In *Dobbins v. Cordiner*, 41 M. 169, held that deed of wife, with blank for grantee's name subsequently filled in by husband, is valid in hands of innocent purchaser, she intending deed to have such effect, because given the "enlarged rights of action and property" by statute, they confer "the capacity to be bound and to be estopped by their conduct when necessary for the protection of others; but there are limitations upon this doctrine." This is contrary to *Drury v. Foster*, 2 Wall. 24 (69 U. S.); *Simmes v. Hervey*, 19 Iowa, 273, *Dillon, J.*; *Burns and wife v. Lynde*, 6 Allen (Mass.), 305; 2 Dev. & Bat. 381; 24 N. Y. 330; 14 Ga. 173; 52 Pa. 400; 48 Pa. 497; 39 Pa. 209; 29 Ill. 306; 71 Iowa, 376.

SEC. 3868. Ante-nuptial contracts — Wife's torts.—Nothing in this act shall be construed to affect ante-nuptial contracts or settlements, nor to exempt a husband from liabilities for torts committed by his wife.

1869, ch. 56, § 6. Section 3866, *ante*, provides that a married woman shall be responsible for torts committed by her, and her property liable therefor, to the same extent as if she were unmarried. At common law the husband is liable for wife's torts. 24 E. C. L. 48; 43 id. 315; 33 id. 96. And liable for wife's ante-nuptial debts and contracts if judgment during coverture, but not otherwise. 1 Salk. 116; 1 P. Wms. 461; 3 P. Wms. 411. Ante-nuptial contracts are discharged by marriage, except (1) contracts to be performed after coverture. 1 Br. H. & W. 18, 19; 1 Bl. Com. 442; 5 T. R. 384. (2) Contracts made in contemplation of marriage (settlements). 2 Sto. Eq. 1370; 2 P. Wms. 243; 2 Atk. 97. (3) By one or both in a representative character. 3 Co. 136; 1 Salk. 306; 1 Br. H. & W. 21; *Broom, Max.* 89. (4) With a trustee for the other. 1 Br. H. & W. 21.

SEC. 3869. Neither liable for debts of other.—No married woman shall be liable for any debts of her husband, nor shall any married man be liable for any debts or contracts of his wife, entered into either before or during coverture, except for necessaries furnished to the wife after marriage, where he would be liable at common law.

1869, ch. 56, § 8. 28 M. 209; 34 M. 369. At common law husband liable for wife's contracts during coverture on ground of agency, express or implied. 2 Smith, L. C. 365. Implied from usage of the parties; from custom of neighborhood. 1 Am. L. Cas. 550. By husband taking benefit of contract. 12 Wall. 681. From peculiar circumstances, such as sickness. 2 Smith, L. Cas. 352. He is also liable for necessaries, except where she refuses without cause to live with him, where she has committed adultery, and where she is supplied. 2 Smith, L. Cas. 332, 360, 364.

SEC. 3870. Action to bar dower or curtesy.—Whenever a married man shall be deserted by his wife, or a married woman shall be deserted by

her husband, for the space of one year, or whenever he or she would, for any cause, be entitled to a divorce from such husband or wife under the laws of this state, or whenever he or she has a husband or wife that has been insane for ten years immediately prior to the time of bringing the action hereinafter named, and upon the hearing thereof shall be found to be incurably insane, he or she may bring an action in the district court of the proper county, asking for a decree which shall bar him or her so deserting or furnishing grounds for a divorce, or so found to be incurably insane as aforesaid, from any right or estate by the curtesy or in dower, or otherwise, as the case may be, in or to his or her lands, and which will give such husband or wife, full authority to alien, sell and convey, and dispose of his or her lands, without the interference of or signature of the husband or wife so deserting, or being guilty of acts which would entitle the person bringing such action to a divorce, or so found to be incurably insane as aforesaid; and the court may grant such decree whenever it shall appear just or expedient; and thereupon the husband or wife shall have full control of his or her real estate, with power to convey the same without the husband or wife joining in the conveyance, and as fully as if he or she were unmarried; or the court may, by such decree, make such limitations on the power to convey such real estate as may seem meet and proper in the premises. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds in any county wherever such lands or any part thereof may be situated.

1869, ch. 56, § 5, as amended 1874, ch. 66 (March 5); 1889, ch. 90 (March 8). 27 M. 330; 22 M. 348. G. S. ch. 69, § 5, empowered wife to become sole trader by license from probate judge, when abandoned by husband, or when he neglected to make adequate provision for maintenance of self and family, which is abrogated by acts 1869. Acts 1869, ch. 56, § 5, limited to desertion of and cause for divorce by husband. Acts 1874, ch. 66, extended to desertion of and cause for divorce by wife. Acts 1889 inserted provision as to insanity.

SEC. 3871. **Legal personal identity of wife.**— That from and after the passage of this act women shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights, as a woman, which her husband does, as a man; and for any injury sustained to her reputation, person, property, character or any natural right, she shall have the same right to appeal, in her own name alone, to the court of law or equity for redress and protection, that her husband has to appear in his name alone; *provided*, this act shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law.

1887, ch. 207: "An act to declare and protect the legal personal identity of married women." Approved February 2, 1887. At common law marriage destroyed legal identity of wife, but equity recognized it and protected acts and contracts made by and for benefit of wife. 7 T. R. 351; 1 Bl. Com. 442; 2 Sto. Eq. §§ 1370-1385.