

THE
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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CHAPTER 69.

MARRIED WOMEN.

As to acknowledgment by married women of instruments affecting real estate, see § 5651.

§ 5530. Separate legal existence.

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 courts 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, c. 207; ¹ G. S. 1878, v. 2, c. 69, § 7.)

Laws 1887, c. 207, does not authorize a married woman to convey, or contract with reference to, her land, independently of her husband. *Althen v. Tarbox*, 48 Minn. 18, 50 N. W. Rep. 1018.

§ 5531. Property rights.

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, c. 56, § 1; ² G. S. 1878, c. 69, § 1.)

As respects the statutory separate estate of a married woman, she has the same absolute right to the use and enjoyment thereof as a *feme sole*; and, to the extent necessary to the full exercise and protection of such right, she must be regarded as having a separate legal existence, distinct from her husband, and wholly unaffected by her marriage relation. *Spencer v. St. Paul & Sioux City R. Co.*, 22 Minn. 29. Followed, *Wampach v. St. Paul, etc., R. Co.*, 22 Minn. 34.

The wife may, with the consent of the husband, have the exclusive benefit of services performed in the family. *Mason v. Dunbar*, (Mich.) 5 N. W. Rep. 432. But see *Neale v. Hermans*, (Md.) 5 Atl. Rep. 424.

Wife's earnings about her husband's property. *Hamill v. Henry*, (Iowa,) 28 N. W. Rep. 32; *Triplett v. Graham*, (Iowa,) 12 N. W. Rep. 143.

Replevin by the wife against the husband. *White v. White*, (Mich.) 25 N. W. Rep. 490.

Promissory note executed by the husband to a third person, and transferred to the wife. *Knox v. Moser*, (Iowa,) 28 N. W. Rep. 629.

As to torts committed against the wife, see *McLimans v. City of Lancaster*, (Wis.) 23 N. W. Rep. 639; *Fleming v. Town of Shenandoah*, (Iowa,) 25 N. W. Rep. 752; *Nichols v. Railroad Co.*, (Iowa,) 28 N. W. Rep. 44.

See, also, *Dayton v. Walsh*, (Wis.) 2 N. W. Rep. 65; *Hossfeldt v. Dill*, 28 Minn. 469, 10 N. W. Rep. 781; *Ladd v. Newell*, 34 Minn. 107, 24 N. W. Rep. 366; *Cummings v. Friedman*, (Wis.) 26 N. W. Rep. 575; *Morgan v. Morgan*, (Mich.) 26 N. W. Rep. 144; *Jones v. Brandt*, (Iowa,) 13 N. W. Rep. 310; *Laib v. Brandenburg*, 34 Minn. 367, 25 N. W. Rep. 803.

¹ An act to declare and protect the legal, personal identity of married women. Approved February 2, 1887. § 2 repeals all inconsistent laws or portions of laws.

² An act to amend chapter sixty-nine of the General Statutes, entitled "Married Women." Approved March 5, 1869. This act entirely supersedes G. S. 1866, c. 69.

§ 5532. **Contracts—Torts—Deeds, mortgages, etc., of land
—After judgment of divorce in Minnesota.**

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; 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, and instruments releasing dower in lands of a former deceased husband, shall be valid, unless her husband shall join with her in such conveyance, save as provided in section five of this chapter as amended: 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; 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. 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, c. 56, § 2, as amended 1878, c. 25, § 1; G. S. 1878, c. 69, § 2; 1889, c. 103, § 1; 1891, c. 82, § 1.)

Under this section, a married woman must be joined by her husband in the execution of a contract for the sale of land. *Place v. Johnson*, 20 Minn. 219, (Gil. 198.) A married woman owning certain property leased the same, describing it as a "certain twenty acres." The lease also contained an agreement to convey the same to the tenant upon certain terms and conditions. The tenant elected to purchase, complied with the conditions, and was tendered a deed of twenty acres, surveyed off the east side, (the tract actually containing twenty-three acres,) which, in ignorance of the fraud, he accepted and paid the purchase money. Held that, though the agreement to convey was void for want of the husband's assent, going into possession under the agreement was part performance, and the deed could be reformed to correct the description, or a decree entered for conveyance of the remainder of the tract. *Id.*

A mortgage made by a married woman, living with her husband, of her real estate, her husband not joining, and the mortgage not being given to secure the purchase money of the mortgaged land, is void. One to whom, subsequently to the making of such mortgage, such married woman has conveyed such real estate, her husband joining, may maintain an action to stop a threatened and pending foreclosure of the mortgage, and to have the mortgage declared void as a cloud upon his title. *Yager v. Merkle*, 26 Minn. 429, 4 N. W. Rep. 819.

The creation or declaration of a trust in lands is a conveyance of an interest in them. Hence a married woman cannot create or declare such a trust, unless her husband join in the deed. *Tatge v. Tatge*, 34 Minn. 272, 25 N. W. Rep. 596, 26 N. W. Rep. 121.

A married woman may make a valid contract, binding herself to pay a pre-existing debt of her husband. *Northwestern Mut. Life Ins. Co. v. Allis*, 23 Minn. 337.

Torts of the wife, committed in the management of her separate property. *Mayhew v. Burns*, (Ind.) 2 N. E. Rep. 793.

See, also, *Damon v. Deeves*, (Mich.) 23 N. W. Rep. 798; *Gillespie v. Smith*, (Neb.) 80 N. W. Rep. 526.

The husband's consent to his wife's conveyance of her separate estate, under Rev. St. 1851, c. 71, § 105, as amended in 1852, might be oral or in writing, express or implied. *Clague v. Washburn*, 42 Minn. 371, 44 N. W. Rep. 130.

The mere consent of the husband to his wife's sole conveyance is not enough; nor is

his execution as her agent "joining with her in the conveyance." *Gregg v. Owens*, 37 Minn. 61, 33 N. W. Rep. 216.

A contract for the sale of real estate is a "conveyance," within this section. *Id.*

See *Hill v. Gill*, 40 Minn. 441, 443, 42 N. W. Rep. 294; *Althen v. Tarbox*, 48 Minn. 18, 50 N. W. Rep. 1018.

Whether a married woman may be estopped from asserting her capacity to execute a sole deed. *Nell v. Dayton*, 43 Minn. 242, 45 N. W. Rep. 229.

Laws 1839, c. 103, amending this section, is retrospective as well as prospective, and is valid. *Wistar v. Foster*, 46 Minn. 484, 49 N. W. Rep. 247.

Under the insolvent law of 1881, a married woman may make an assignment of her unexempt property, including real estate, for the benefit of her creditors, without her husband joining. *Kinney v. Sharvey*, 48 Minn. 93, 50 N. W. Rep. 1035.

A married woman may join in covenants with her husband in his deed, and may be estopped thereby. *Sandwich Manuf'g Co. v. Zellmer*, 48 Minn. 408, 51 N. W. Rep. 379.

Specific performance of a contract for the sale of lands of a married woman will not be enforced where the agent executing it exceeded his written authority, though he had written authority from the husband. *Hennessey v. Woolworth*, 123 U. S. 433, 9 Sup. Ct. Rep. 109.

See *Dayton v. Nell*, 43 Minn. 246, 45 N. W. Rep. 231.

§ 5533. Husband and wife not liable for each other's debts:

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 necessities furnished to the wife after marriage, where he would be liable at common law.

(1869, c. 56, § 3; G. S. 1878, c. 69, § 3.)

The husband alone is responsible for the wife's board, unless the wife expressly charge the same upon her separate estate. *Israel v. Silsbee*, (Wis.) 15 N. W. Rep. 144.

The employment of a domestic servant is within the implied authority of the wife. *Wagner v. Nagel*, 33 Minn. 343, 23 N. W. Rep. 303.

The employment of a seamstress, for ordinary domestic service in and for the benefit of the husband's family, held *prima facie* to be within the rule respecting the presumptive agency of the wife. *Flynn v. Messenger*, 28 Minn. 208, 9 N. W. Rep. 759.

The legal implication that, for goods purchased for ordinary family use, the husband is solely liable, can be overcome, so as to charge the wife, only by proof of an express contract on her part, or of circumstances, other than the purchase of the goods, fairly establishing an implied contract. *Chester v. Pierce*, 33 Minn. 370, 23 N. W. Rep. 539.

Liability of the husband for goods sold the wife after notice forbidding such sale. *Devendorf v. Emerson*, (Iowa,) 24 N. W. Rep. 515.

For a discussion of the liability of the wife for family expenses, see *Krouskop v. Shoutz*, (Wis.) 8 N. W. Rep. 241; *Laib v. Brandenburg*, 34 Minn. 367, 25 N. W. Rep. 803.

§ 5534. 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, c. 56, § 4; G. S. 1878, c. 69, § 4.)

Under this section a husband cannot, as the attorney or agent of his wife, make a valid lease of her real estate. *Sanford v. Johnson*, 24 Minn. 172.

A married woman cannot release to her husband her inchoate interest in his real estate under the statute, so as to exclude her, as widow, from dower. *In re Rausch*, 35 Minn. 291, 28 N. W. Rep. 920.

A married woman is entitled to the rents, increase, and product of her property, real or personal, and may manage the same through the agency of her husband. *Ladd v. Newell*, 34 Minn. 107, 24 N. W. Rep. 366. It is, however, a proper subject of judicial inquiry by the proper tribunal whether or not such agency is fraudulent, and intended to cover the substantial ownership of the husband in the product resulting from his services, skill, and management. *Id.*

As to the agency of the husband for the wife, see *Bouck v. Enos*, (Wis.) 21 N. W. Rep. 825; *Furman v. Railroad Co.*, (Iowa,) 26 N. W. Rep. 83; *Benson v. Morgan*, (Mich.) 14 N. W. Rep. 705; *Furman v. Railroad Co.*, (Iowa,) 17 N. W. Rep. 598; *Comfort v. Sprague*, 31 Minn. 405, 18 N. W. Rep. 108.

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Where not prejudicial to the rights of creditors, a husband may, for the purpose of making a settlement upon and providing for the maintenance of his wife, convey real estate directly to her. *Wilder v. Brooks*, 10 Minn. 50, (Gil. 32.)

Reformation of a voluntary deed from husband to wife. *Redding v. Rozell*, (Mich.) 26 N. W. Rep. 677.

As to mutual releases, see *Leach v. Leach*, (Wis.) 26 N. W. Rep. 754.

Under our statutes giving a married woman absolute control over her personal property, and authorizing her to carry on business on her own account, and, except as respects her real estate, to constitute her husband her agent, and authorizing husband and wife to contract with each other as fully as if the marriage relation did not exist between them, a controversy between a wife and her husband's creditors, as to whether certain personal property belongs to her or her husband, is, as in other cases, to be determined upon the fair preponderance of the evidence. *Laib v. Brandenburg*, 34 Minn. 367, 25 N. W. Rep. 803.

See *Riley v. Mitchell*, 36 Minn. 3, 29 N. W. Rep. 588; *McKinney v. Bode*, 32 Minn. 223, 229, 20 N. W. Rep. 94.

The wife may, with her own money and in good faith, buy her husband's property sold on foreclosure, and hold it free from liability on account of his debts. *Houston v. Nord*, 39 Minn. 490, 40 N. W. Rep. 568.

A conveyance of the husband's land under power of attorney from him to his wife is void. *Jones v. Bliss*, 48 Minn. 307, 51 N. W. Rep. 375.

See *Fall v. Moore*, 45 Minn. 515, 48 N. W. Rep. 404.

As to what facts may work an estoppel against the husband in such case. *Jones v. Bliss*, supra.

A married woman is estopped, as against an innocent purchaser, to assert that a deed of her land was invalid because, when she executed it, no grantee was named in it, or because she did not know that the land was her own and not her husband's; she having shown no excuse for not reading it. *Dobbin v. Cordiner*, 41 Minn. 165, 42 N. W. Rep. 870.

A married woman may be precluded from repudiating her husband's agency to sell her land, if she retains the proceeds of the negotiations. *Knappen v. Freeman*, 47 Minn. 491, 50 N. W. Rep. 533.

An agreement between husband and wife after a separation, by which he undertakes to pay money for her support in consideration of her release of all claims on him, is valid. *Roll v. Roll*, 51 Minn. 353, 53 N. W. Rep. 716.

The burden is on a wife to show that a conveyance to her by her husband was for valuable consideration, when made after accrual of claims against him. *Minneapolis Stock-Yards & P. Co. v. Halonen* (Minn.) 57 N. W. Rep. 1135.

§ 5535. Proceedings to debar husband or wife from interest in property of the other.

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 debar 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, c. 56, § 5, as amended 1874, c. 66, § 1; G. S. 1878, c. 69, § 5; 1880, c. 90, § 1.)

The rule that, unless the contrary clearly appears to have been intended by the legislature, statutes should be construed to be prospective, and not retrospective, in their

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scope and operation, applied to the first clause of this section. *Giles v. Giles*, 22 Minn. 348.

As to the authority of the wife in case of abandonment to sell the husband's property for the support of the family, see *Rawson v. Spangler*, (Iowa,) 17 N. W. Rep. 173.

See *Weld v. Weld*, cited in note to § 4790.

§ 5536. Ante-nuptial contracts — Husband's liability for 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, c. 56, § 6; G. S. 1878, c. 69, § 6.)

As to the liability of the husband for the torts of the wife, see *Ricci v. Mueller*, (Mich.) 2 N. W. Rep. 23; *Commonwealth v. Flaherty*, (Mass.) 5 N. E. Rep. 258.

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