

CHAPTER 519

RIGHTS AND PRIVILEGES OF MARRIED WOMEN

519.01 SEPARATE LEGAL EXISTENCE.

HISTORY. 1887 c. 207; G.S. 1878 Vol. 2 (1888 Supp.) c. 69 s. 7; G.S. 1894 s. 5530; R.L. 1905 s. 3605; G.S. 1913 s. 7142; G.S. 1923 s. 8616; M.S. 1927 s. 8616.

This statute does not authorize or empower married women to enter into valid contracts, with respect to, or to convey, their real property, independently of their husbands. *Althen v Tarbox*, 48 M 18, 50 NW 1018.

A married woman cannot maintain an action against another woman simply as an action in damages for criminal conversation with the husband. *Kroessin v Keller*, 60 M 372, 62 NW 438.

The statute has not abrogated the common law rule, holding the husband liable in damages for slanderous words uttered by his wife, although he is not present, and in which he has not participated. *Pett-Morgan v Kennedy*, 62 M 348, 64 NW 912.

A married woman may sue her husband in her own name, in any form of action, to enforce any right affecting her property. *Gillespie v Gillespie*, 64 M 381, 67 NW 20.

A wife living apart from her husband for any justifiable cause, may maintain, independent of an action for divorce, an equitable action against her husband for separate support. *Baier v Baier*, 91 M 165, 97 NW 671.

As a part of a settlement in divorce proceedings, the husband deeded through a third person an undivided half interest in the homestead, and both continued for some time to occupy same. Held, neither husband nor wife can dispose by sale or conveyance of a homestead right without the consent of the other, and consequently a disposal cannot be done indirectly by partition. *Grace v Grace*, 96 M 294, 104 NW 969.

A married woman cannot, either before or after a divorce, maintain a civil action against her husband for a personal tort committed by him against her during coverture. *Strom v Strom*, 98 M 427, 107 NW 1047; *Drake v Drake*, 145 M 388, 177 NW 624; *Woltman v Woltman*, 153 M 217, 189 NW 1022.

The larceny statute of this state does not apply to a married woman when accused of the theft of property from her husband. *State v Arnold*, 182 M 313, 235 NW 373.

Prior to their marriage, plaintiff contracted with defendant to do certain work on her farm at a monthly salary. After their marriage, he still continued to work as before. Held, in an action to recover wages, the contract was not abrogated by the marriage, and the plaintiff may recover. *Archer v Moulton*, 183 M 306, 236 NW 455.

A transfer of the homestead farm and additional acres held to be an absolute transfer to the wife for valuable security, and not a mere equitable mortgage. *Durgin v Stevenson*, 192 M 526, 257 NW 338.

The death by wrongful act statute permits the administrator of a daughter's estate to sue the father of the deceased for her wrongful death, caused by the father's negligence, though the sole beneficiary is the wife of the defendant. *Albrecht v Potthoff*, 192 M 557, 257 NW 377.

Neither wife nor minor child may recover damages for personal injuries inflicted upon the husband and father by the negligent act of another. The remedy is to be redressed solely by an action by the husband and father. *Eschenbach v Benjamin*, 195 M 378, 263 NW 154.

A married woman under our statutes, cannot maintain an action against her husband for damages claimed to have been caused to her by the negligence of her husband prior to their marriage. *Patenaude v Patenaude*, 195 M 523, 263 NW 546.

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Plaintiff while a guest passenger in defendant's car, then being operated by plaintiff's husband, suffered injuries and brought this action. Held, immunity of the husband from suit in tort on the part of his wife does not inure to the benefit of the owner of the car. *Miller v Tyrholm*, 196 M 438, 265 NW 324.

When a husband acquires possession of property of the wife, with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of evidence that a gift was intended. The fact that the widow, as administratrix, listed the property as belonging to her husband's estate, does not estop her from making claim that it was held in trust for her. *Reifsteck v Reifsteck*, 197 M 315, 267 NW 259.

Where a husband is driving his wife as passenger, his negligence cannot be imputed to the wife on the basis of joint venture, unless it is shown that the wife jointly controlled the driving of the car. *Olson v Kennedy*, 199 M 493, 272 NW 381.

The settled policy of this state is that one spouse may not maintain a civil action against the other for personal injuries caused by the other's tort, and this forbids the wife from maintaining an action, though the accident occurred in Wisconsin, where the law differs from that of Minnesota. *Kyle v Kyle*, 210 M 204, 297 NW 744.

The husband has absolute power to dispose of his personal property if no fraud is perpetrated against his wife's marital right. The wife in the instant case is not her husband's creditor under the uniform fraudulent conveyance act. If fraud was practiced on a wife in obtaining her signature to a deed of the home-stead, the wife was entitled to follow the proceeds of the sale or so much thereof as went into the purchase of an annuity contract by the husband. *Maruska v Equitable*, 21 F. Supp. 841.

Conveyances under married woman's act. 1918 OAG 126.

Action by husband against wife; personal tort. 4 MLR 538.

Husband and wife; effect of non-suability for tort. 9 MLR 485; 14 MLR 574.

Right of one spouse to recover for negligent tort of the other. 10 MLR 439; 11 MLR 79.

Partnership of husband and wife; principal and surety. 12 MLR 544.

Taxation; tenancy by the entirety. 14 MLR 393.

Convenience of the public interest concept. 15 MLR 559.

Effect of marriage on contract existing at the time of marriage. 16 MLR 108.

Recovery for wrongful death where sole beneficiary is wife of tortfeasor. 19 MLR 595.

Suit by wife against husband to recover for negligent tort occurring prior to marriage. 20 MLR 227.

Transfers between husband and wife, and the uniform fraudulent conveyance act. 23 MLR 619.

519.02 PROPERTY RIGHTS.

HISTORY. 1869 c. 56 s. 1; G.S. 1878 c. 69 s. 1; G.S. 1894 s. 5531; R.L. 1905 s. 3606; G.S. 1913 s. 7143; G.S. 1923 s. 8617; M.S. 1927 s. 8617.

A wife during coverture holds the profits and natural increase of her personal property as her separate estate, both as against her husband and his creditors. In this case the wife might replevin her sheep and their increase from the sheriff who had levied upon them under judgments against her husband. *Williams v McGrade*, 13 M 46 (39).

Husband and wife resided on the wife's property, and sued the defendant for trespass. Held, the wife has the same rights as a feme sole, may sue for damage to her property, and though living under the protection of her husband, she is in her legal rights unaffected by the marriage relation. *Spencer v Railway*, 22 M 29; *Wampach v Railway*, 22 M 34.

A married woman, by statute, is empowered to make contracts (except as to real estate) as though she was unmarried. She may operate a farm and own the product, and there shall be no deduction from the fact her husband assists in the operation of the farm, that he has any property interest in the product that would allow his creditors to levy thereon. *Hossfeldt v Dill*, 28 M 469, 10 NW 781.

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A married woman is entitled to the rents, increase, and product of her property, and may manage the same through the agency of her husband. 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. *Ladd v Newell*, 34 M 107, 24 NW 366.

In a controversy between a wife and her husband's creditors as to whether certain personal property belongs to her or her husband, the determination is based upon a fair preponderance of the evidence. *Laib v Brandenburg*, 34 M 367, 25 NW 803.

An agreement between husband and wife that she may have and own the compensation paid by a boarder vests the income in the wife and it is immaterial that the boarder has no knowledge of the arrangement. *Riley v Mitchell*, 36 M 3, 29 NW 588.

A married person is not deemed an incompetent attesting witness at the time of the execution of a will, simply because the spouse of such person is a beneficiary under the will. *In re Julia C. Holt's Will*, 56 M 33, 57 NW 219.

A married woman may sue her husband in her own name, in any form of action, to enforce any right affecting her property, the same as if he were a stranger. *Gillespie v Gillespie*, 64 M 381, 67 NW 20.

A judgment creditor of a married man is not entitled to have his judgment made a general or specified lien upon the husband's one-third interest in the real property of the wife during coverture. During such time she is entitled to hold it free from any liability on account of his debts, as fully as if she were unmarried. *Sudbo v Rusten*, 66 M 108, 68 NW 513.

Where the statute required the petition by signature by a freeholder, a married man living with his wife on a lot in his wife's name was not a freeholder. *Hamilton v Detroit*, 85 M 83, 88 NW 419.

Whether a particular item which the family uses in common is owned by the wife or by the husband is a question of fact. *Kroll v Moritz*, 112 M 270, 127 NW 1120.

Plaintiff, a married woman resident of New York was injured at a railway crossing through the negligence of defendant's agents. Held, the action is properly triable in Minnesota; two distinct causes of action arise, one to the injured wife, the other to her husband covering his loss. The wife may sue in her own name. *Libaire v Railway*, 113 M 517, 130 NW 8.

The plaintiff wife in an action for conversion of a team proved title. Held, the fact that the husband rebonded did not affect the wife's rights; nor did the fact that this team was included with other property in a mortgage executed by the husband. *Klein v Frerichs*, 127 M 177, 149 NW 2.

A conveyance by the husband to the wife's brothers for a consideration and a conveyance back to the wife as payment by her of the amount advanced by her brothers held not fraudulent, and a valid title was in the wife, and in a replevin action against the sheriff the wife prevailed. *Hoover v Carver*, 135 M 105, 160 NW 249.

A wife's inchoate interest in her husband's property cannot be subjected to the husband's indebtedness beyond the amount to which she joins in the mortgage, although it may be reached by execution or judicial sale. *Wade v Bank*, 158 M 231, 197 NW 277.

Husband and wife were not living together. The husband purchased property and under his instructions the vendor deeded the property to the defendant his niece, she in turn made a deed to the property in blank and delivered both deeds to Nash. The deeds were not recorded, and were in Nash's possession at the time of his death. In an action by the widow against the niece praying for an order that the niece be declared a trustee for the benefit of the widow, she being the sole heir of Nash. Held, there was no resulting trust, and the deed executed by the niece, the place for the vendee's name being blank, is inoperative. *Nash v Kirschhoff*, 166 M 464, 208 NW 193.

By permitting her husband to use and manage, apparently as his own, her separate property, a wife may estop herself from asserting her ownership as

against a mortgagee who has extended credit to the husband on the faith of his apparent ownership. *War Finance Corp. v Erickson*, 171 M 276, 214 NW 45.

Theresa Kehrler, having good title to land sold it to defendant, and at his request deeded to defendant's sister. No payment was made. The administrator of Mrs. Kehrler's estate had a right of recovery for the purchase price irrespective of defense raised in the answer. *Kehrler v Seeman*, 182 M 596, 235 NW 387.

Plaintiff entered into a contract to work for defendant as a farm hand, subsequently plaintiff and defendant married. Held, the marriage did not abrogate the contract, and he may recover the wages earned by him before and after marriage. *Archer v Moulton*, 183 M 306, 236 NW 455.

The fact that the land was owned jointly, and the wife did not join in the contract relating to the cutting of timber therefrom, is not important for she substantially participated. *Morrow v Bank*, 186 M 516, 243 NW 785.

Neither wife nor minor child may recover damages for personal injuries inflicted upon the husband and father by the negligent act of another. The action should be by the father and husband. *Eschenbach v Benjamin*, 195 M 378, 263 NW 154.

When a husband acquires possession of the separate property of the wife, with or without her consent, and there is no evidence of gift, he must be deemed to hold it in trust for her benefit. *Reifsteck v Reifsteck*, 197 M 315, 267 NW 259.

A wife's ownership of an automobile is established by presumption where the evidence shows that the automobile was purchased in her name and paid for partly with her funds and partly by a transfer of her husband's automobile. *State v Buick Sedan*, 216 M 129, 12 NW(2d) 1.

Fraudulent conveyance; homestead in wife's name. 2 MLR 392.

Larceny of husband's property by wife. 3 MLR 433.

Partnership of husband and wife. 12 MLR 544.

Effect of marriage on contract existing at time of marriage. 16 MLR 108.

Suit by wife against husband to recover for negligent tort occurring prior to marriage. 20 MLR 227.

519.03 RESPONSIBLE FOR TORTS AND BOUND BY CONTRACT.

HISTORY. 1869 c. 56 s. 2; 1878 c. 25 s. 1; G.S. 1878 c. 69 s. 2; 1889 c. 103; 1891 c. 82 s. 1; G.S. 1894 s. 5532; 1905 c. 255; R.L. 1905 s. 3607; 1907 c. 417 s. 1; G.S. 1913 s. 7144; G.S. 1923 s. 8618; M.S. 1927 s. 8618.

A married woman may make a valid contract, binding herself to pay a pre-existing debt of her husband. *Northwestern v Allis*, 23 M 337; *Sandwich v Zellmer*, 48 M 408, 51 NW 379.

A wife may purchase, own and operate a farm and own the product, and the fact that she is assisted by her husband does not create such ownership in him that the product may be attached for his personal debt. *Hossfeldt v Dill*, 28 M 469, 10 NW 781.

When the property of the husband is sold on a mortgage, the wife has the same right as any other person to purchase it and hold it free from any liability on account of her husband's debts, but she must purchase with her own money. *Houston v Nord*, 39 M 490, 40 NW 568.

Where an insolvent caused property to be conveyed to his wife, and she was cognizant of all the facts deemed fraudulent, she will be treated as an involuntary trustee for existing creditors, and the receivers may proceed against her to recover the property. *Chamberlain v O'Brien*, 46 M 80, 48 NW 447.

When in a petition, one who signs must be a freeholder, the signature of a husband who owns no real estate, but who resides in a home standing in the name of the wife, is not valid for the purpose intended. *Hamilton v Detroit*, 85 M 83, 88 NW 419. Amended by Laws 1905, Chapter 255; Laws 1907, Chapter 417.

Neither husband nor wife may sell or dispose of the homestead without the express consent of the other, and what cannot be done directly cannot be done by indirection through an action in partition. *Grace v Grace*, 96 M 294, 104 NW 969.

The mere fact that a transfer of a land contract to a mother by a married daughter was invalid because it did not contain the husband's signature, does not

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entitle the daughter and her husband to have the deed set aside in equity, and the title confined in the daughter, where it appears that the mother, in fairness, should have the legal title. *Laythe v Minnesota*, 101 M 152, 112 NW 65.

The surviving non-resident spouse of a non-resident testator may renounce the will and claim as a statutory heir, and the rights of a surviving spouse as statutory heir are not affected by statutes relating to "degrees of kindred" and excluding those not of the blood of the ancestor from whom the inheritance is ancestral. *Boeing v Owlsley*, 122 M 190, 142 NW 133.

Plaintiff employed at a stated salary by defendant afterwards became her husband, and thereafter continued in her employment. Held, the contract was a valid and continuing one, and he may recover his wages. *Archer v Moulton*, 183 M 306, 236 NW 455.

A transfer of a farm and all personal property from a husband to a wife, if not fraudulent, is deemed absolute rather than mere security for indebtedness of the husband to the wife. *Durgin v Stevenson*, 192 M 526, 257 NW 338.

In this proceeding to recover for services rendered, the deceased by his daughter-in-law pursuant to an alleged contract to pay at his death, the court erred in refusing to instruct the jury that the services of the wife with respect to household duties belonged to the husband. He may waive his right of compensation, but if so, it must be shown that the person who is to pay has acquiesced in the arrangement. *Empenger v Empenger*, 194 M 219, 259 NW 795, 261 NW 185.

In an action by a woman against a taxicab company, plaintiff's husband had lived apart from her for five years, during which time she had received no support. She alone employed the services of the nurse, doctor, and hospital for which she alleged special damages, and as she is liable for payment, she may recover from the wrongdoer. *Paulos v Koelsch*, 195 M 603, 263 NW 913.

The marriage relation in itself did not create an agency in the wife authorizing her to make or cancel or surrender a lease. *Twin City v Oase*, 199 M 124, 271 NW 253.

No constructive trust was created in favor of a husband who improved his wife's property. *Martin v Tucker*, 217 M 104, 14 NW(2d) 105.

Partnership between husband and wife. 12 MLR 545.

Suit by wife against husband to recover for negligent tort occurring prior to marriage. 20 MLR 227.

519.04 PROPERTY ACQUIRED BY WIFE DURING SEPARATION; CONVEYANCES.

HISTORY. 1913 c. 237 s. 1; G.S. 1913 s. 7145; G.S. 1923 s. 8619; M.S. 1927 s. 8619.

519.05 LIABILITY OF HUSBAND AND WIFE.

HISTORY. 1869 c. 56 s. 3; G.S. 1878 c. 69 s. 3; G.S. 1894 s. 5533; 1897 c. 10; 1899 c. 325 s. 1; 1901 c. 22 s. 1; R.L. 1905 s. 3608; G.S. 1913 s. 7146; G.S. 1923 s. 8620; M.S. 1927 s. 8620.

The statute extending the rights of married women did not change or modify the presumption that a vendor may safely deal with the wife as the agent of her husband where she purchases domestic articles or goods of such character as to indicate they were for the benefit of the family. *Flynn v Messenger*, 28 M 208, 9 NW 759.

The legal implication that goods purchased for ordinary domestic use are intended for the family of the husband, and that he and not the wife is liable, can be overcome, and the wife charged with the debt only if the vendor can prove express or implied contract on her part. *Chester v Pierce*, 33 M 370, 23 NW 539.

Prior to Laws 1897, Chapter 10, a husband was liable for his wife's torts. The common law rule which holds a husband liable in damages for slanderous words uttered by his wife, although he is not present, and in which he has not participated in any manner, has not been abrogated by the passage of statutes relating to married women. *Pett-Morgan v Kennedy*, 62 M 348, 64 NW 912.

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A father who is supporting the family may maintain an action for loss of the services of a minor child, and need not join the mother as a party. *Ackeret v Minneapolis*, 129 M 190, 151 NW 970.

The statute making both husband and wife liable to third parties for necessaries furnished the family does not change the rule that, as between husband and wife, the duty to furnish such necessaries rests upon the husband. *Kosanke v Kosanke*, 137 M 115, 162 NW 1060.

Under the statute the wife is not liable for the rent of the family home leased to the husband. *Lewis v France*, 137 M 333, 163 NW 656.

The statute declaring the husband not liable for the torts of his wife, abolished the common law rule in such cases, but was not intended to include torts committed by his wife while acting as his agent under authority expressly or impliedly conferred upon her. *Plasch v Fass*, 144 M 44, 174 NW 438.

The common law rule has been modified so that where husband and wife are living together, they are jointly and severally liable for necessary household goods and supplies, and a husband must pay, notwithstanding the fact he furnished his wife with means of procuring them. *Rotering v Hibbard*, 168 M 502, 210 NW 395.

A county which furnishes necessary support to a woman deserted by her husband may recover of the husband. *County v Siebert*, 175 M 39, 220 NW 156.

In considering whether services rendered by a daughter in caring for a sick mother were necessaries for which the father was liable, evidence as to the amount the daughter was earning in the position she left was admissible. *Bokelmann v Bokelmann*, 180 M 100, 230 NW 478.

A husband selected and purchased an automobile, paid what was paid on the purchase price, and the car's upkeep. The title and registration was in the wife's name, and she signed a chattel mortgage on the car as security for the unpaid balance. She did not drive the car. The wife cannot be held liable, under the family automobile doctrine, for negligence of the husband in operating the car. *Cewe v Schuminski*, 182 M 126, 233 NW 805.

In an action by a purchaser of real estate to rescind on the grounds of fraud, the wife of the vendor, who only signed the conveyance to release her inchoate right of dower, and who received no part of the proceeds of the sale, is not liable upon a rescission to pay plaintiff the consideration plaintiff paid. *McDermott v Ralich*, 188 M 501, 247 NW 683.

Where a husband brought divorce proceedings and the plaintiff in the instant case acted as her attorney, and the differences being composed and the divorce case dismissed, plaintiff sued both husband and wife for his unpaid fees. Held, he could recover a judgment against the wife, but from the husband he was entitled to only such fees as the court hearing the divorce proceedings might order. *Melin v Ryan*, 189 M 638, 249 NW 194.

Absent fraud or a plea for reformation of the instruments, a wife cannot successfully defend against a note which she signed with her husband on the ground that she signed merely to bar her right of dower to premises which she and her husband mortgaged to secure the note. *Bank v Hell*, 202 M 68, 277 NW 276.

The term "necessaries" applied to a husband's liability for his wife's purchases includes ornaments or other articles suitable to her station in life, and is not confined to the mere necessities of existence, and this, though she has independent means of her own, or has been furnished means to make the purchase. *Hill v Com. of Internal Revenue*, 88 F(2d) 941.

The so-called poor laws are not applicable to and do not govern the admission to tuberculosis sanatoria. 1935 OAG 252, March 25, 1935.

A man who has been separated from his wife for 30 years is not entitled to old age assistance when it can be shown that the wife owns property in excess of \$5,000. OAG March 8, 1945 (521p-1).

Pleasure ride; liability of the husband or parent for negligence of wife or child. 4 MLR 74.

Husband's statutory liability for household supplies used by the family. 11 MLR 279.

"Family purpose" doctrine not applicable to motor boat. 16 MLR 870.

519.06 CONTRACTS BETWEEN HUSBAND AND WIFE.

HISTORY. 1869 c. 56 s. 4; G.S. 1878 c. 69 s. 4; G.S. 1894 s. 5534; R.L. 1905 s. 3609; G.S. 1913 s. 7147; G.S. 1923 s. 8621; M.S. 1927 s. 8621.

1. Contracts relating to realty
2. Contracts other than relating to realty
3. Burden of proof
4. Agency of one spouse for the other

1. Contracts relating to realty

A husband may, when not prejudicial to creditors, convey real estate directly to his wife for the purpose of making a settlement upon her or a provision for her maintenance. Where the conveyance is by ordinary deed, the presumption is that it was made for such purpose, even where it conveys all the husband's estate. *Wilder v Brooks*, 10 M 50 (32).

The common law and the statutory rule, forbidding conveyances of real estate between husband and wife, refer only to conveyances from one to the other directly, and not to conveyances through a third person as conduit. *McMillan v Cheeney*, 30 M 519, 16 NW 404.

Plaintiff bought school lands from the state on part payment plan, and received a certificate of purchase. He made a sealed assignment to his wife, and after her death the administrator of her estate executed a sealed assignment to Angus. Held, the assignment from husband to wife was void under the statute. *McKinney v Bode*, 32 M 228, 20 NW 94.

A married woman cannot release to her husband her contingent or inchoate interest under the statute in his real estate, so as to exclude her as widow from "dower". In *re Rausch*, 35 M 291, 28 NW 920.

The capacity of married women to be bound and estopped by their conduct is incident to their enlarged power to deal with others. A married woman, who at her husband's request, executes and acknowledges a deed of conveyance of real property, knowing it to be such, and allows her husband to take it away for delivery to a purchaser, is estopped as against an innocent purchaser to assert that the deed was invalid because when she executed it, no grantee was named in it, or because she did not know that the land described in the deed was her own, she not having read the deed. *Dobbin v Cordiner*, 41 M 165, 42 NW 870.

A husband procured the title to real estate to be taken in his wife's name. Held, a subsequent written declaration of trust signed by her, and a proven verbal declaration made at the time of the execution of the conveyance are void as within the statute of frauds, and the statute of uses and trusts. The evidence supports a finding of no trust *ex malificio*. *Luse v Reed*, 63 M 5, 63 NW 91.

A conveyance of a husband to his wife may be valid when made through a third party, though based upon an invalid agreement between husband and wife, and when, as in this case, the deed to the conduit was recorded, but the deed from the conduit was not yet of record, when this attachment was made, the creditor knowing all the facts would acquire no rights through his attachment. *Jorgenson v Minneapolis*, 64 M 489, 67 NW 364.

Although husband and wife had separated, a mortgage executed by him to her on his real estate was invalid and constituted no lien upon such estate. *Phillips v Blaker*, 68 M 152, 70 NW 1082.

In an action for partition of a quarter section of land, the defendant husband claims title by adverse possession through a person stranger to the title. Before the statute had run in his favor, he brought an action against five owners in common, the true owners. Three of the five appeared and prevailed, and he purchased their rights and had the deed made to his wife, a co-defendant, and from then on the land was occupied by tenants procured by him. This action was brought by assigns of the two tenants in common who did not answer. Held, the deed to his wife constituted an abandonment of his claim of adverse possession, and it was held that plaintiff be decreed two-fifths and the wife three-fifths of the property. *Blomberg v Montgomery*, 69 M 149, 72 NW 56.

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Plaintiff's intestate assuming she was sole owner of the property sold it under contract to defendant. In fact, the title was one-third in her and two-thirds in her children. She gave defendant a bond for a deed wherein she covenanted for herself, and her heirs, to convey the land to him on payment of certain notes, but she died without performing her covenant. Held, the children are not bound by her covenant, and are not bound to convey their interest. *Loveridge v Coles*, 72 M 57, 74 NW 1109.

The owner of land who has contracted to sell same, may terminate the rights of the purchaser for deferred payments under Laws 1897, Chapter 223, which requires service of notice as provided for therein, stating the time, not less than 30 days from such service, when the rights of the purchaser will be canceled. In the instant case, the time within which payments might have been made having terminated, a check was tendered to the wife of the vendor, who, in her husband's absence, accepted same. It was seasonably returned by the husband. Held, the acceptance of the check by the wife did not constitute a waiver of the delinquency, nor reinstate the purchaser in his rights. *Sylvester v Holasek*, 83 M 362, 86 NW 336.

A party may obligate himself to devise and bequeath real and personal property to minor relatives in consideration that such beneficiaries shall assume a peculiar and domestic relation to the promisor, and render him services of a character impossible to estimate their value by a pecuniary standard. While contracts between husband and wife involving real property are void, still in case of an executed contract by which the husband conveyed all his property to his wife by will on condition that she devise and bequeath to designated relatives upon default on her part she is deemed a trustee ex malificio for the parties beneficially interested. *Laird v Vila*, 93 M 45, 100 NW 656.

The husband as sheriff, may enter into an agreement by which his wife for stated consideration will furnish board for the jail prisoners. The husband acquires no interest in the profits, and property acquired from the profits of the enterprise, and recorded in the name of the wife, are not impressed with a trust for the benefit of the husband's creditors. *Bodkin v Kerr*, 97 M 301, 107 NW 137.

Quinn, through a conduit, deeded land to his wife. At that time he was indebted to the defendant. Subsequently he discharged in bankruptcy. The defendant levied up and sold the land on execution sale. This action was brought by the heirs of the wife. Held, the transfer was fraudulent as to the defendant, and defendant was, consequently, the owner of the land. *Quinn v Minneapolis*, 102 M 256, 113 NW 689.

The signature of the wife as a witness to an executory contract by the husband for a sale of his real property, she being in no way referred to in the instrument, does not constitute on her part a written consent within the meaning of the statute. *Stromme v Rieck*, 107 M 177, 119 NW 948.

The husband loaned money on the land of a third person and took a mortgage in his own name. The mortgage was assigned to his wife. She put it in a box but did not record it. After his death, this action was brought by his son against his stepmother for his share. Held, not within the statute and the evidence sustains the validity of the assignment to the wife. *Kersten v Kersten*, 114 M 24, 129 NW 1051; *Hatlestad v Mutual*, 197 M 647, 268 NW 665.

A written consent by the husband to his wife's devise by will is valid and effectual, though given in furtherance of a void written agreement between husband and wife, by which each released all interest in the other's real property; the wife having performed her part of the agreement. *Erickson v Robertson*, 116 M 90, 133 NW 164.

Any agreement regarding alimony entered into prior to or pending divorce proceedings, when adopted by the court and made a part of the order or decree, is subject to later change by the court. In the instant case, and as real estate was involved, the contract could have no validity as between husband and wife. The entire arrangement is based upon the court order. *Warren v Warren*, 116 M 458, 133 NW 1009.

A husband cannot make a valid contract for the sale of his wife's land, either as her agent or otherwise, and a contract made by him is not binding upon her,

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unless she subsequently adopts and confirms it. *Baker v Brundage*, 131 M 299, 154 NW 1086.

A contract for sale of the homestead was executed by the wife alone. The husband thereafter confirmed and ratified the contract. The contract is enforceable, the husband being willing to join in a conveyance. The statute is not for the protection of the purchaser, but to prevent a spouse from alienating the homestead without the consent of the other. *Lennartz v Montgomery*, 138 M 170, 164 NW 899.

The statute declaring the husband not liable for torts of his wife, which abolished the rule of the common law, was not intended to extend to torts committed by the wife while acting as her husband's agent under authority expressly or impliedly conferred upon her, or when she is operating the family car. *Plasch v Fass*, 144 M 44, 174 NW 438.

A contract by a husband for the separate maintenance of his wife, executed when they were living apart by mutual consent, is not contrary to public policy. It is enforceable, and does not offend against the statute or one relating to the husband's real estate, though the amount payable to the wife was based upon rental receipts. *Vanderburgh v Vanderburgh*, 152 M 189, 188 NW 276.

A conveyance by deed of real property in 1890, by a wife directly to her husband, is invalid, and upon her death the property descends to and vests in her legal heirs, subject to her debts, regardless of such deed. *Snortum v Snortum*, 155 M 230, 193 NW 304.

The evidence supports a finding that a deed conveying the fee title from a husband and wife to their daughter, and a deed from the daughter to the mother conveying a life estate, were executed without consideration, and that, if the deed were allowed to stand, the husband would be insolvent and his creditors defrauded. *Thompson v Schiek*, 171 M 284, 213 NW 911.

Where the promises of the husband, under antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. *Sparrow v Sparrow*, 172 M 91, 214 NW 791.

Where defendant's brother and sister were operating a farm, and the sister employed plaintiff at a stipulated monthly wage, and subsequently the plaintiff and defendant were married, the contract was not abrogated by the marriage, and plaintiff may recover for wages earned before and after marriage. *Archer v Moulton*, 183 M 306, 236 NW 455.

A husband and wife signed and acknowledged a trust deed on Sept. 1, 1923, and put it in escrow to be delivered upon condition the trustee accepted the deed and upon the contingency of the wife's being granted an absolute divorce. The divorce was granted, the trustee accepted, and the deed delivered. Held, the transaction did not violate the statute vitiating contracts between husband and wife relative to real estate. *Trust Co. v Lancaster*, 185 M 121, 240 NW 459.

In this case there was a contract between husband and wife whereby the latter was bound to make agreed testamentary disposition of property left her by her husband; his will was of such nature as to its terms that, coupled with other evidence of the testator's intention, it was properly held that the agreement between husband and wife had been abrogated, and that the disposition made of his property by the husband's will was intended to be absolute. *Hanefeld v Fairbrother*, 191 M 547, 254 NW 821.

An equitable mortgage cannot be created by law to secure advances made by wife to husband on the faith of the latter's parol promise to give security on his real estate. *Williams v Williams*, 192 M 438, 257 NW 1.

A transfer of a farm and all the owner's personal property from husband to wife, not being fraudulent, considered absolute rather than mere security for indebtedness from husband to wife. *Durgin v Stevenson*, 192 M 526, 257 NW 338.

A separation agreement between husband and wife in terms obligated each to join the other in conveyances or mortgages on real property belonging to either was invalid. *Simmer v Simmer*, 195 M 1, 261 NW 481.

The right of one spouse to accept by gift inter vivos, or take under the will of the other spouse, is not affected by an antenuptial agreement between them, except

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where it is found that by such gift or agreement it was intended a satisfaction or redemption thereof. *Berg v Berg*, 201 M 179, 275 NW 836.

A husband is not entitled to an equitable lien upon his wife's property for the value of his services in improving the property in the absence of proof that he was induced to perform the services or make the advancements by fraud, duress, under influence, or mistake of such character that he is entitled to restitution. *Martin v Tucker*, 217 M 105, 14 NW(2d) 105.

Conveyance of homestead by husband and wife. 2 MLR 64.

Protection of the inchoate right of dower. 11 MLR 356.

Validity of conveyance directly from husband to wife. 13 MLR 612.

Necessity of two deeds to make a grantor a joint tenant. 17 MLR 233.

Joint and mutual wills. 19 MLR 113.

Fraudulent conveyances. 23 MLR 619.

Reservation of life estate in favor of non-owning spouse. 25 MLR 241.

2. Contracts other than relating to realty

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 the wife and her husband's creditors, is to be determined upon the fair preponderance of the evidence. *Laib v Brandenburg*, 34 M 367, 25 NW 803.

A widow is only entitled to an allowance or distributive share, under the statute, of such personal estate of her husband as was not lawfully disposed of by his last will. In *re Rausch*, 35 M 291, 28 NW 920.

A married woman will not, under our statutes, be entitled to moneys due from boarders or from nursing earned as part of the duties of her household, but she may become entitled by virtue of an agreement with her husband, and this, even though the recipient of the service has no knowledge of the arrangement and after the death of the recipient, she may file her claim against his estate. *Riley v Mitchell*, 36 M 3, 29 M 588.

When the property of the husband is sold on a mortgage, the wife has the same right as any other person to purchase it and hold it free from any liability on account of her husband's debts, provided she do so in good faith, with her own money. *Houston v Nord*, 39 M 490, 40 NW 568.

An agreement made between husband and wife after a separation by which he undertakes to pay her a stipulated sum for her support in consideration of her release of all other claims upon him therefor, is valid, and may be enforced against him by action. *Roll v Röll*, 51 M 353, 53 NW 716.

3. Burden of proof

Where a judgment is based upon a claim which accrued prior to the conveyance through conduit of the husband debtor to his wife, the burden of proof is upon the wife to show by clear and satisfactory evidence, that it was for a valuable consideration, paid by her or by someone in her behalf. *Minneapolis v Halonen*, 56 M 469, 57 NW 1136.

Transfers between husband and wife, whether made directly or indirectly, are prima facie fraudulent as to existing creditors; the burden resting upon the wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by someone in her behalf. *Bank v Swenson*, 197 M 425, 267 NW 366.

In a suit by a judgment creditor of husband to set aside as fraudulent a transfer of bank stock by husband to wife, burden of clearly showing good faith in the transfer, and that a valuable consideration was paid by the wife or some one in her behalf rested upon the wife. *Brennan v Friedell*, 212 M 115, 2 NW(2d) 547.

4. Agency of one spouse for the other

The word "interest" includes the estate of a lessee and therefore a husband cannot, as his wife's agent, make a valid lease of her real property. *Sanford v Johnson*, 24 M 172; *Van Brunt v Wallace*, 88 M 116, 92 NW 521.

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 M 107, 24 NW 366.

A husband as agent for his wife, cannot bind her real estate by a lease thereof in her behalf, and a receipt by the wife of a month's rent at a fixed rate in such lease will not, in the absence of other evidence, be sufficient to establish a lease by her for a year, or a term longer than was paid for, leaving the tenancy one at will. *Fall v Moore*, 45 M 515, 58 NW 404.

When a married woman employed her husband to negotiate a sale of her real estate, and in such negotiations he made false representations, upon an action by the purchaser to rescind the sale the representations are to be held as though made by herself. She cannot retain the benefits of his negotiations, and repudiate the means by which they were obtained. *Knappen v Freeman*, 47 M 491, 50 NW 533.

A married woman acting under a power attempted a sale and conveyance of the improved farm, and the consideration was paid and a deed executed by her under such power, the deed is invalid because of statutory disability of the wife; but if the consideration is accepted and retained by the husband, and possession delivered and accepted by the vendee with the consent of the husband, and he having knowledge of the facts acquiesces in the transaction, he will be estopped to deny that the vendee is the equitable owner of the premises. *Jones v Bliss*, 48 M 307, 51 NW 375.

The husband entered into a contract of sale of real estate as agent for his wife, the record owner. The vendee declined to perform the terms of the contract, and sued to recover back the \$500.00 earnest money. Held, that as the vendors were able to give good title, and were willing to perform the terms of the contract, the vendee cannot recover the \$500.00, even though the contract is void. *Keystone v Logan*, 55 M 537, 57 NW 156; *Stromme v Rieck*, 107 M 177, 119 NW 948.

The wife, record owner of the premises brought detainer proceedings for non-payment of rent. The defendant, as a defense, set up a contract with plaintiff's husband. The holding was for plaintiff, the alleged contract being oral and within the statute of frauds and being in the nature of a sale of real estate was not within the husband's legal authority. *Betcher v Rinehart*, 106 M 381, 118 NW 1026.

A real estate agency entered into a contract with defendant for the sale of land. It contained a provision that it be approved by the owner. It was so approved in writing by the owner's husband. Held, plaintiff's remedy was by action in specific performance, and parol evidence may be introduced to prove ownership by the plaintiff, and that her husband acted as her agent and under his authority, and the contract is enforceable. *Davidson v Hurty*, 116 M 280, 133 NW 863.

Plaintiff, by virtue of some arrangement with the husband of the mortgagor, sought to recover rents of premises upon which he held a mortgage. It was held the husband had no authority to enter into the contract, and it was invalid. *Sutton v Brekke*, 117 M 519, 134 NW 289.

The evidence sustains the finding that the husband was the authorized agent of his wife. *Watson v Gardner*, 183 M 233, 236 NW 213.

The wife has authority to employ persons to do housework and similar and as the agent of her husband. *Holland v McGrath*, 189 M 172, 248 NW 750.

Where husband is driving his car with his wife as a passenger, his negligence cannot be imputed to the wife on the basis of a joint venture, unless it is shown that the wife jointly controlled in driving at the time of the collision. The fact that the husband was taking his wife to the doctor did not affect the finding in favor of the wife and against the defendant. *Louis Olson v Kennedy*, 199 M 493, 272 NW 381.

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519.07 BARRING INTEREST OF SPOUSE; RIGHTS RECIPROCAL.

HISTORY. 1869 c. 56 s. 5; 1874 c. 66 s. 1; G.S. 1878 c. 69 s. 5; 1889 c. 90 s. 1; G.S. 1894 s. 5535; R.L. 1905 s. 3610; G.S. 1913 s. 7148; G.S. 1923 s. 8622; M.S. 1927 s. 8622.

Laws 1874, Chapter 66, relating to "desertion by wife" refers to future desertion. The law is prospective only. *Giles v Giles*, 22 M 348.

A district court judgment adjudging that the husband shall pay \$30.00 per month for the wife's separate support and maintenance, is implied authority for the wife to live separate and apart, and such living apart is not deemed desertion. *Weld v Weld*, 27 M 330, 7 NW 267.

A wife who has been wrongfully deserted by her husband for a period that will enable her to maintain an action for divorce, instead of seeking a divorce, may maintain an action against her husband and obtain a decree debarring him from any interest in her real estate, and in the same action obtain an allowance for the support of herself and her minor child. *Stephen v Stephen*, 102 M 301, 113 NW 913.

Since the father is bound to support his minor child, the court may require him to pay such support to the wife, even though she has no legal cause to live apart from him, and even where she fails to prove grounds for a divorce. *Hoffman v Hoffman*, 174 M 159, 218 NW 559.

Effect of wife's bigamous marriage on interest in husband's property. 8 MLR 66.

Right of husband to recover expenses of wife's last illness and funeral from her separate property. 8 MLR 67.

Separation agreements; implied condition that wife be chaste. 19 MLR 222.

519.08 ANTENUPTIAL CONTRACTS.

HISTORY. 1869 c. 56 s. 6; G.S. 1878 c. 69 s. 6; G.S. 1894 s. 5536; 1897 c. 10; R.L. 1905 s. 3611; G.S. 1913 s. 7150; G.S. 1923 s. 8623; M.S. 1927 s. 8623.

Antenuptial contracts are not against public policy, but are favorably regarded, and will be sustained when equitable and fair. In cases where fraud may be present, the adequacy of consideration is a factor, and the onus of proof may be on the person claiming under the instrument. *Malchow v Malchow*, 143 M 53, 172 NW 915.

Antenuptial agreements valid. 1934 OAG 300, Nov. 23, 1934.

519.09 DOWER AND CURTESY ABOLISHED.

HISTORY. 1925 c. 174 s. 1; M.S. 1927 s. 8622-1; 1939 c. 152 s. 1.

Effect of unchastity on dower. 19 MLR 222.

519.10 ACTIONS NOT MAINTAINABLE.

HISTORY. 1925 c. 174 s. 2; M.S. 1927 s. 8622-2; 1939 c. 152 s. 2.