

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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of an exempt homestead, under the provisions of § 1, does not render the whole of such homestead tract liable to sale on execution, even though such party wholly neglect to define the boundaries of his homestead within the limits prescribed by that section. The ruling upon this point, in the decision of this case on a former appeal, (25 Minn. 183,) adhered to. *Ferguson v. Kumler*, 27 Minn. 156, 6 N. W. Rep. 618.

§ 5. Same—Sale.

After the selection of [or] survey shall have been made, the officer making the levy may sell the property levied upon, and not included in such homestead, in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed or certificate of the same may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as such homestead, as aforesaid. (*Id.*)

§ 6. Exemption of dwelling when land owned by another.

See *Hamlin v. Parsons*, 12 Minn. 108, (Gil. 59, 60.)

§ 8. Sale of homestead—Removal—Effect.

Since the enactment of this statute, a sale of the homestead, even with a fraudulent intent, will not make the same liable to forced sale on execution. *Morrison v. Abbott*, 27 Minn. 116, 6 N. W. Rep. 455. Followed, *Ferguson v. Kumler*, 27 Minn. 156, 6 N. W. Rep. 618.

See, also, *Baldwin v. Rogers*, 28 Minn. 544, 11 N. W. Rep. 77; *Kaser v. Haas*, 27 Minn. 406, 407, 7 N. W. Rep. 824; *Folsom v. Carli*, 5 Minn. 333, (Gil. 264;) *Donaldson v. Lamprey*, 29 Minn. 18, 11 N. W. Rep. 116; *Kipp v. Bullard*, 30 Minn. 84, 14 N. W. Rep. 364.

§ 9. Implied abandonment.

Where the owner of a homestead has permanently and unequivocally abandoned it, by removing from it, and acquiring a new homestead elsewhere, his right of exemption to the first is lost. This is not such a removal as is contemplated or permitted by § 8. Hence, filing notice of claim under this section, under such circumstances, will not preserve or continue his right of exemption. *Donaldson v. Lamprey*, 29 Minn. 18, 11 N. W. Rep. 119.

See, as to abandonment, *Williams v. Moody*, 35 Minn. 280, 28 N. W. Rep. 510.

See, also, *Russell v. Speedy*, (Minn.) 37 N. W. Rep. 340; *Kaser v. Haas*, 27 Minn. 406, 407, 7 N. W. Rep. 824.

CHAPTER 69.

MARRIED WOMEN.

*§ 1. Property rights.

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. 689; 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. 810; Laib v. Brandenburg, 34 Minn. 367, 25 N. W. Rep. 803.

***§ 2. Power to contract—Liabilities—Contracts affecting real estate.**

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; Gregg v. Owens, 33 N. W. Rep. 216.

***§ 3. Husband and wife not liable for each other's debts.**

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. 348, 23 N. W. Rep. 308.

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.

***§ 4. Contracts between husband and wife.**

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. 173.

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.

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. 228, 229, 20 N. W. Rep. 94.

*§ 5. Desertion, etc., of husband or wife.

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 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 c. 62, § 6, subd. 5, *supra*.

*§ 6. Torts of the wife—Liability of husband.

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.

*§ 7. Rights of married women.

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 appeal 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.*)

CHAPTER 70.

FEES.

FEES OF CLERKS OF DISTRICT COURTS.†

§ 2. Schedule of fees.

For issuing and sealing every writ, summons, subpoena or process, fifty cents.

Certified copy of such writ, when required, ten cents per folio, and twenty-five cents for certificate.

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

†For fees of the clerk of court of Goodhue county, see Sp. Laws 1879, c. 307; same, Kandiyohi county, Sp. Laws 1887, c. 365; same, Mower county, Sp. Laws 1879, c. 308; Sp. Laws 1881, c. 108; same, Otter Tail county, Sp. Laws 1887, c. 358; same, Rice county, Sp. Laws 1879, c. 306.