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James W. Day
*University of Florida*

# RIGHTS ACCRUING TO A HUSBAND UPON MARRIAGE WITH RESPECT TO THE PROPERTY OF HIS WIFE

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THE common law,[1] like the Roman Law[2] and many others of its prototypes, restricted the activities of the married woman with a view toward assuring her subservience to her husband.[3] These restrictions limited her capacity to own and control property of various kinds and vested correlative powers and estates or interests in her husband. With the decline in importance of the feudal objectives sought to be furthered by these common-law restrictions, which accompanied the evolution of the modern social order, various devices were successively engrafted by court action or statute on the existing body of the law, with the result that the harshness of the original doctrines was alleviated under specified circumstances. The rights and estates that were given to the wife by these innovations were respectively denominated as her equity to a settlement, her separate equitable estate, and her separate statutory property; and each lessened the power of control over her property that prior thereto had been exercisable by her husband. Confusion has frequently resulted from a failure to differentiate among the interests and estates in question with the result that the characteristics and legal effects that are peculiar to each have at times been ascribed erroneously to the others.

Attention is directed in this article to the principles of the common law and the features of the subsequent developments that are believed to be of greatest current value either because the particular doctrine still persists or because it aids in the evaluation of a precedent for use in a legal background that differs from that of the period or jurisdiction in which the decision was rendered.

## *The Situation at Common Law*

*Estate during coverture (jure uxoris).* At common law a husband acquired an estate during coverture in all present freehold estates[4] of

* Professor of Law, University of Florida.

1 Cf. 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 2d ed., 399-414 (1905).

2 SOHM INST., 3d ed., Ledlie, §93 (1907).

3 That these restrictions did not prevent some wives from exercising paramount influence over family matters and even affairs of state is of course abundantly illustrated both in history and classical literature; but in the main, the objective of male dominance was attained.

4 The estate did not arise in a remainder or reversion owned by the wife that was subsequent to a freehold estate. Cf. 2 BLACKST. COMM. *127.

which his wife was seised at the time of the marriage or of which she became seised by inheritance, devise, or conveyance, during the continuance of the marriage and before a child of the marriage was born alive who was capable of inheriting the land. The estate continued until the marriage was terminated by the death of the husband,[5] by the death of the wife[6] or by divorce,[7] or until a child of the marriage capable of inheriting the land was born alive.[8] Upon the latter event, the estate during coverture terminated, and the husband acquired an estate by the curtesy initiate.[9]

While the estate during coverture continued, the husband had the right to the possession and control of the land[10] and was entitled to the rents and profits that accrued.[11] Although the husband was jointly seised of the land with his wife in the right of his wife as long as the estate during coverture existed, instead of being solely seised of it,[12] he could alienate it without joining his wife in the conveyance,[13] and his creditors could subject it to the payment of their claims to the same extent as his other freehold estates.[14] The estate acquired by one claiming under the husband of course terminated at the same time as would have been the case if it had been retained by him, and at that time the property remained to the wife unaffected by any conveyance made or debts incurred by the husband.[15]

[5] Evans v. Kingsberry, 2 Rand. (Va.) 120 (1823).

[6] 2 BLACKST. COMM. *433.

[7] E.g., Wright v. Wright, 2 Md. 429 (1852).

[8] See, e.g., Lancaster County Bank v. Stauffer, 10 Pa. 398 at 399 (1849); 2 BLACKST. COMM. *126.

[9] See note 8 supra. The estate by the curtesy is not within the scope of this article.

[10] See, e.g., Blood v. Hunt, 97 Fla. 551 at 560, 121 S. 886 (1929).

[11] 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 2d ed., 407 (1905); 2 TIFFANY, REAL PROPERTY, 3d ed., §484 (1939); see Blood v. Hunt, 97 Fla. 551 at 560, 121 S. 886 (1929).

[12] E.g., Melvin v. Proprietors of Locks and Canals on Merrimack River, 16 Pick. (Mass.) 161 (1834); Polyblank v. Hawkins, 1 Doug. 329, 99 Eng. Rep. 211 (1780); 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 2d ed., 408 (1905); 2 TIFFANY, REAL PROPERTY §484 (1939); Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 at 348 (1949).

[13] E.g., Jones v. Freed, 42 Ark. 357 (1883); Eaton v. Whitaker, 18 Conn. 222 (1846); 2 TIFFANY, REAL PROPERTY §484 (1939); Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 at 348 (1949); see Blood v. Hunt, 97 Fla. 551 at 560, 121 S. 886 (1929).

[14] E.g., Montgomery v. Tate, 12 Ind. 615 (1859); Beale v. Knowles, 45 Me. 479 (1858); 2 TIFFANY, REAL PROPERTY §484 (1939); Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 at 348 (1949); Litchfield v. Cudworth, 15 Pick. (Mass.) 23 at 28 (1833); Blood v. Hunt, 97 Fla. 551 at 560, 121 S. 886 (1929).

[15] E.g., Miller v. Shackelford, 3 Dana (Ky.) 289 (1835); Bruce v. Wood, 1 Metc. (Mass.) 542 (1840); Munnerlyn v. Munnerlyn, 2 Brev. (S.C.) 2 (1805); Evans v. Kingsberry, 2 Rand. (Va.) 120 (1823); Co. LITT. *326a; Blackman v. Blackman, 45 Ariz. 374 at 381, 43 P. (2d) 1011 (1935).

*Chattels personal.* The husband's estate during coverture arose only in present freehold estates of his wife. At common law, however, he acquired extensive rights by virtue of the marriage in certain of her other assets. Her chattels personal, for example, by the weight of authority became his immediately and absolutely without the exercise by him of any act of ownership over them.[16] It has, however, been stated in a few decisions, usually gratuitously and unnecessarily, that her chattels did not vest in him without such an act of ownership.[17]

*Choses in action.* A wife's choses in action, also, became the property of her husband if, and only if, he sufficiently reduced them to his possession.[18] This necessity of a husband's reducing to possession his wife's choses in action as a prerequisite to acquiring ownership of them applied not only to choses owned by her at the time of the marriage[19] but also, by the weight of authority, to those acquired by her during the marriage.[20] If he did not reduce her choses to possession until after her death, they did not become his;[21] and if he predeceased her without having reduced them to possession, they survived to her.[22]

In order for a husband to reduce to possession his wife's chose, it was necessary for him to acquire absolute dominion over it, at least for a time, without the concurrence of his wife.[23] When, for example, he collected the money due on her chose with the intention to devote it to his own use, it became his property.[24] Similarly, if he recovered a judgment on his wife's chose in his name alone, which he could do in the case of a bond[25] or other chose[26] that she had acquired during the

[16] E.g., Jordan v. Jordan, 52 Me. 320 (1864); 2 BLACKST. COMM. *435.

[17] See, e.g., Blood v. Hunt, 97 Fla. 551 at 560, 121 S. 886 (1929).

[18] E.g., Johnson's Admr. v. Johnson, 33 Ala. 284 (1858); Phelps v. Phelps, 20 Pick. (Mass.) 556 (1838); Hoop and Hoffman v. Plummer, 14 Ohio St. 448 (1863).

[19] E.g., Johnson's Admr. v. Johnson, 33 Ala. 284 (1858); Hoop and Hoffman v. Plummer, 14 Ohio St. 448 (1863).

[20] E.g., Phelps v. Phelps, 20 Pick. (Mass.) 556 (1838); Scarpellini v. Atcheson, 7 Q.B. 864, 115 Eng. Rep. 713 (1845). A minority view existed, however, to the effect that a chose that accrued to the wife during coverture vested in the husband absolutely even if he did not reduce it to possession. See, e.g., McKay v. Mayes, 16 Ky. L. 862 at 865, 29 S.W. 327 (1895).

[21] E.g., Johnson's Admr. v. Johnson, 33 Ala. 284 (1858); cf. Phelps v. Phelps, 20 Pick. (Mass.) 556 (1838); Scarpellini v. Atcheson, 7 Q.B. 864, 115 Eng. Rep. 713 (1845); 2 BLACKST. COMM. *435. A wife's chose for rent in arrears that had become due before the marriage, was, however, given to her husband by a statute, even if she predeceased him before he had reduced it to possession. 32 Hen. 8, c. 37(4) (1540).

[22] 2 BLACKST. COMM. *434.

[23] Cf. Nicholson v. Drury Buildings Estate Company, 7 Ch. D. 48 (1876).

[24] E.g., Humphries v. Harrison, 30 Ark. 79 (1875); see Hart v. Leete, 104 Mo. 315 at 330, 15 S.W. 976 (1891).

[25] See Oglander v. Baston, 1 Vern. 396, 23 Eng. Rep. 540 (1686).

[26] Hilliard v. Hambridge, Aleyn 36, 82 Eng. Rep. 903 (1648); see Leakey v. Maupin, 10 Mo. 368 (1847).

marriage, it became his absolutely and passed upon his death to his personal representative.[27] If, however, he joined his wife in the action in which the judgment was obtained and predeceased her before it was satisfied, the judgment survived to her.[28] When a husband assigned his wife's chose in action or pledged it to secure his own debt with the intent to appropriate it as his own, he sufficiently reduced it to possession to divest his wife of her property in it.[29] But if he merely took possession of his wife's bond without recovering a judgment on it or receiving payment of it or altering the security itself, there was no such reduction to possession as would vest the ownership of it in him.[30]

*Chattels real.* A husband also acquired at common law a qualified ownership of his wife's estates in land less than freehold. He was entitled to all of the rents and profits arising from them[31] and could alienate or mortgage them for the entire term without the consent of his wife.[32] They could be subjected to the claims of his creditors,[33] and if he outlived his wife, they vested in him absolutely.[34] If he predeceased his wife, however, her chattels real could not pass by his will[35] but survived to her.[36]

### *The Wife's Equity to a Settlement*

At least as early as the seventeenth century a means was devised to provide a wife with assets that were partially free from these extensive controls of her husband. Real or personal property was transferred to a trustee for her benefit; and the equitable interest thus vested in her was in a proper situation afforded protection from her husband.[37] Even

[27] Oglander v. Baston, 1 Vern. 396, 23 Eng. Rep. 540 (1686); 2 BLACKST. COMM. *434.

[28] See Leakey v. Maupin, 10 Mo. 368 (1847); Oglander v. Baston, 1 Vern. 396, 23 Eng. Rep. 540 (1686).

[29] Cf. Birmingham Waterworks Co. v. Hume, 121 Ala. 168, 25 S. 806 (1899) (involving a husband's assignment of his wife's corporate stock).

[30] Pickett & Pickett v. Everett, use of Yallaly, 11 Mo. 568 (1848); see Southern Bank of Fulton v. Nichols, 235 Mo. 401 at 410, 138 S.W. 881 (1911).

[31] 2 BLACKST. COMM. *434.

[32] Ibid.; see Bates v. Dandy, 2 Atk. 207 at 208, 26 Eng. Rep. 528 (1741); cf. In re Bellamy, 25 Ch. D. 620 at 625 (1883).

[33] 2 BLACKST. COMM. *434; see Allen v. Hooper, 50 Me. 371 at 374 (1862).

[34] In re Bellamy, 25 Ch. D. 620 (1883); 2 BLACKST. COMM. *434; Co. LITT. *300.

[35] 2 BLACKST. COMM. *434; Co. LITT. *351.

[36] 2 BLACKST. COMM. *434.

[37] Doyly v. Perfull, 1 Ch. Cas. 225, 21 Eng. Rep. 871 (1673); Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 and 350 (1949); 5 HOLDSWORTH, HISTORY OF ENGLISH LAW, 2d ed., 312-314 (1937).

such a transfer made by a woman prior to her marriage in trust for herself was upheld.[38] For a time the consent of the present or prospective husband was a prerequisite to the validity of a trust for a married woman, whether created by her or by another;[39] but later this doctrine was repudiated.[40] Even thereafter, however, if a woman made a secret transfer of her assets in trust for herself while the negotiations with reference to her marriage to an individual were in progress, her husband could have the transfer invalidated as a fraud on his marital rights.[41]

The equitable interest of a wife in a trust thus established for her benefit was, to be sure, not entirely beyond the control of her husband, but neither he[42] nor one to whom he had assigned it[43] could reach it except in equity. In that forum the maxim was applied that he who seeks equity must do equity, and the husband or his assignee of his wife's equitable interest was usually granted the relief he sought only upon the condition that a suitable provision be made from the trust assets or otherwise for the maintenance of the wife and her children.[44]

The right of a married woman to have such a provision made from the assets of a trust of which she was the beneficiary, was known as the wife's equity to a settlement.[45] The equity of the wife to a settlement was not limited to instances in which a trust had been established for her benefit, however, but extended also to cases in which other estates or interests of hers were so situated that they could be reached by her husband or his assignee or creditor only by a proceeding in equity.[46] Thus when a husband or his creditor sought in equity to obtain a legacy to which his wife was entitled, she could insist upon a settlement;[47] and when her land was subject to a mortgage, with the result

[38] Doyly v. Perfull, 1 Ch. Cas. 225, 21 Eng. Rep. 871 (1673).

[39] Sir Edward Turner's Case, 1 Vern. 7, 23 Eng. Rep. 265 (1681).

[40] Cf. Countess of Strathmore v. Bowes, 2 Bro. C.C. 345 at 350, 29 Eng. Rep. 194 (1789).

[41] Goddard v. Snow, 1 Russ. 485, 38 Eng. Rep. 187 (1826); cf. Countess of Strathmore v. Bowes, 2 Bro. C.C. 345 at 351, 29 Eng. Rep. 194 (1789); 4 POMEROY, EQUITY JURISPRUDENCE, 5th ed., §1113 (1941); see Taylor v. Taylor, 197 N.C. 197 at 201, 148 S.E. 171 (1929).

[42] Earl of Salisbury v. Bennet, Skin. 285, 90 Eng. Rep. 129 (1691).

[43] Cf. Macaulay v. Philips, 4 Ves. 15 at 19, 31 Eng. Rep. 8 (1798).

[44] Cf. Sturgis v. Champneys, 5 My. & Cr. 97, 41 Eng. Rep. 308 (1839); Earl of Salisbury v. Bennet, Skin. 285, 90 Eng. Rep. 129 (1691).

[45] Cf Clarke v. McCreary, 20 Miss. (12 S. & M.) 347 at 354 (1849); Poindexter v. Jeffries, 15 Gratt. (Va.) 363 at 368 (1859).

[46] Davis v. Newton, 6 Metc. (Mass.) 537 (1843); see Poindexter v. Jeffries, 15 Gratt. (Va.) 363 at 369 (1859).

[47] White v. Gouldin's Executors, 27 Gratt. (Va.) 491 (1876).

under the common-law theory of mortgages that the legal title was outstanding in the mortgagee, her equity of redemption could be reached by her husband or his assignee only in equity, and there only subject to her equity to a settlement.[48]

When a wife was entitled to a settlement, the English courts in the absence of special circumstances formerly tended to divide the assets equally between her and her children on the one hand and her husband on the other,[49] but at a later period deviations were made from this practice.[50] Even while the practice prevailed, it was based merely on the custom of the courts and did not have the weight of a positive rule;[51] and subsequently it became usual both in England[52] and the United States[53] to leave the amount of the wife's settlement to be determined in each case by the court from the existing facts.

When her husband or one claiming under him attempted to reach her equitable interest in a trust or sought in equity to obtain other assets belonging to her, the settlement to which a wife was entitled was not limited even in England to the provision of necessities for her and her children.[54] It existed, in fact, even though she or her children had ample other means.[55] In the United States, she was entitled to the entire property if it was needed for the maintenance of her and her children,[56] but in England the whole corpus was not settled on her unless her husband was insolvent or had been guilty of such gross misconduct as adultery, cruelty or desertion.[57] When he was wholly unable to maintain her, and the property or fund was small, the English courts settled all of it upon her;[58] but when he was not wholly unable to support her, their usual practice was to settle on her only a part of the assets.[59]

[48] Sturgis v. Champneys, 5 My. & Cr. 97, 41 Eng. Rep. 308 (1839).

[49] Re Groves' Trusts, 3 Gif. 575, 66 Eng. Rep. 537 (1862); Bagshaw v. Winter, 5 DeG. & S. 466, 64 Eng. Rep. 1201 (1852); cf. Spirett v. Willows, L.R. 1 Ch. 520 at 521 (1866).

[50] See In re Suggitt's Trusts, L.R. 3 Ch. 213 at 217 (1868); Kincaid's Trusts, 1 Drew. 326 at 329, 61 Eng. Rep. 477 (1853).

[51] Ibid.

[52] Taunton v. Morris, 11 Ch. D. 779 (1879); Spirett v. Willows, L.R. 1 Ch. 520 (1866); Scott v. Spashett, 3 Macn. & G. 599, 42 Eng. Rep. 391 (1851).

[53] E.g., Howard v. Napier, 3 Ga. 192 (1847); Davis v. Newton, 6 Metc. (Mass.) 537 (1843); Poindexter v. Jeffries, 15 Gratt. (Va.) 363 (1859).

[54] See Carter v. Taggart, 5 DeG. & S. 49 at 54, 64 Eng. Rep. 1013 (1851).

[55] Ibid.

[56] E.g., White v. Gouldin's Executors, 27 Gratt. (Va.) 491 (1876).

[57] Cf., e.g., In re Suggitt's Trusts, L.R. 3 Ch. 217 (1868).

[58] Kincaid's Trusts, 1 Drew. 326, 61 Eng. Rep. 477 (1853); Re Grove's Trusts, 3 Gif. 575 at 583, 66 Eng. Rep. 537 (1862).

[59] Re Grove's Trusts, 3 Gif. 575, 66 Eng. Rep. 537 (1862); Bagshaw v. Winter, 5 DeG. & S. 466, 64 Eng. Rep. 1201 (1852); Kincaid's Trusts, 1 Drew. 326 at 329, 61 Eng. Rep. 477 (1853).

When a husband had previously received considerable portions from the other assets of his wife, the amount of the settlement awarded to her was ordinarily increased.[60] Other circumstances that affected the amount of the wife's settlement were her age, health, and condition, the value of the assets involved, and the number, age, sex, and health of her children.[61]

*The Wife's Separate Equitable Estate*

In order to give a married woman greater protection than that available to her under her equity to a settlement, the courts of equity came to recognize as a distinct property interest, with characteristics peculiar to itself, what was known as her separate equitable estate.[62] This estate arose when property, either real or personal,[63] was transferred by an instrument that manifested an intention that it was to be held to her sole and separate use.[64] No particular form of words was necessary to bring the estate into existence.[65] The only requirement in this connection was that the property in question be designated expressly by the terms of the transfer, or by proper implication therefrom, as being for the separate use of the wife.[66] The estate was created by implication, for example, when the instrument transferring property to a woman, although not reciting that it was for her separate use, empowered her to do acts with reference to it or to make dispositions of it that were inconsistent with the normal marital rights of her husband.[67] If the property was sufficiently designated as for her separate use, the wife's separate equitable estate arose even when the transfer was directly to her without the interposition of a trustee.[68] The hold-

[60] Scott v. Spashett, 3 Macn. & G. 599, 42 Eng. Rep. 391 (1851).

[61] See Davis v. Newton, 6 Metc. (Mass.) 537 at 544 (1843).

[62] Cf. Littleton v. Sain, 126 Tenn. 461 at 465, 150 S.W. 423 (1912); Nixon v. Rose, Trustee, 12 Gratt. (Va.) 425 at 430 (1855); Taylor v. Meads, 4 DeG., J. & S. 597 at 603, 46 Eng. Rep. 1050 (1865); Tullett v. Armstrong, 1 Beav. 1 at 22, 48 Eng. Rep. 838 (1840); Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 at 351 (1949); 4 POMEROY, EQUITY JURISPRUDENCE, 5th ed., §1098 (1941); 2 STORY, EQUITY JURISPRUDENCE, 13th ed., §1378 (1886); 2 TIFFANY, REAL PROPERTY, 3d ed., §485 (1939).

[63] 2 STORY, EQUITY JURISPRUDENCE, 13th ed., §1378 (1886); Taylor v. Meads, 4 DeG., J. & S. 597 at 603, 48 Eng. Rep. 1050 (1865).

[64] Bennet v. Davis, 2 P. Wms. 316, 24 Eng. Rep. 746 (1725); Riley v. Riley, 25 Conn. 154 at 161 (1856).

[65] Robinson v. Randolph, 21 Fla. 629 (1885); Tyrrell v. Hope, 2 Atk. 558, 26 Eng. Rep. 735 (1743); 2 STORY, EQUITY JURISPRUDENCE, §1381; Nixon v. Rose, Trustee, 12 Gratt. (Va.) 425 at 428 (1855); Stanton v. Hall, 2 Russ. & M. 175 at 180, 39 Eng. Rep. 361 (1830).

[66] See note 65 supra.

[67] See Robinson v. Randolph, 21 Fla. 629 at 648 (1885); Nix v. Bradley, 6 Rich. Eq. (S.C.) 43 at 49 (1853).

[68] Cf. Baldwin v. Carter, 17 Day (Conn.) 201 (1845); Darley v. Darley, 3 Atk. 399, 26 Eng. Rep. 1029 (1746); see Riley v. Riley, 25 Conn. 154 at 161 (1856);

ings to this effect were based on the maxim that equity never permits a trust to fail for want of a trustee. When a transfer of this type was made to a woman after her marriage, her husband was held to be the trustee for her.[69]

Whether or not the transfer was to a named trustee, however, the wife's separate equitable estate did not arise, and the husband obtained his ordinary legal or equitable rights in the property, unless the instrument of transfer manifested a clear purpose that it was to be held for her separate use.[70] Thus even after the doctrine of the wife's separate equitable estate came to be recognized, the husband continued to have his marital rights in ordinary trusts for the benefit of his wife in which no intention had been manifested that the property was to be held to her separate use;[71] and as to such trusts she of course continued to have her equity to a settlement as previously had been the case.[72]

A separate equitable estate could be created for a married woman by devise,[73] bequest,[74] or inter vivos transfer;[75] and it could be created either during coverture[76] or, by the weight of authority, before the marriage.[77] In Pennsylvania, however, it was held that this estate could not be created for a feme sole unless at the time of the transfer of the property, her marriage with a designated individual was under consideration;[78] and in a North Carolina case,[79] it was held that a

Harwood v. Root, 20 Fla. 940 at 955 (1884); Fears v. Brooks, 12 Ga. 195 at 197 (1852); Nixon v. Rose, Trustee, 12 Gratt. (Va.) 425 at 434 (1855).

[69] See note 68 supra.

[70] Pollard v. Merrill & Eximer, 15 Ala. 169 (1849); Bowen v. Sebree, 2 Bush (Ky.) 112 (1867); Lumb v. Milnes, 5 Ves. 517, 31 Eng. Rep. 712 (1800); Brown v. Clark, 3 Ves. 166, 30 Eng. Rep. 950 (1796); 2 STORY, EQUITY JURISPRUDENCE §1381.

[71] Pollard v. Merrill & Eximer, 15 Ala. 169 (1849); Lumb & Milnes, 5 Ves. 517, 31 Eng. Rep. 712 (1800); Brown v. Clark, 3 Ves. 166, 30 Eng. Rep. 950 (1796); 2 STORY, EQUITY JURISPRUDENCE §1381.

[72] Lumb v. Milnes, 5 Ves. 517, 31 Eng. Rep. 712 (1800); cf. Brown v. Clark, 3 Ves. 166, 30 Eng. Rep. 950 (1796).

[73] E.g., Small v. Field, 102 Mo. 104, 14 S.W. 815 (1890); Goulder v. Camm, 1 DeG., F. & J. 146, 45 Eng. Rep. 315 (1859).

[74] E.g., Bridges v. Wood, 4 Dana (Ky.) 610 (1836); Nixon v. Rose, Trustee, 12 Gratt. (Va.) 425 (1855); Wassell v. Leggatt, [1896] 1 Ch. 554; In re Tarsey's Trust, L.R. 1 Eq. 561 (1866).

[75] E.g., Saunders v. Harris, 38 Tenn. (1 Head) 185 (1858).

[76] E.g., Re Winn, 57 L.T.R. (N.S.) (Ch.) 282 (1887); cf. Barron v. Barron, 24 Vt. 375 (1852); see Riley v. Riley, 25 Conn. 154 at 163 (1856).

[77] E.g., Robinson v. Randolph, 21 Fla 629 (1885); Fears v. Brooks, 12 Ga. 195 (1852); Saunders v. Harris, 38 Tenn. (1 Head) 185 (1858); In re Tarsey's Trust, L.R. 1 Eq. 561 (1866); Goulder v. Camm, 1 DeG., F. & J. 146, 45 Eng. Rep. 315 (1859); 2 STORY, EQUITY JURISPRUDENCE §1384.

[78] E.g., Estate of Quin, 144 Pa. 444, 22 A. 965 (1891); Snyder's Appeal, 92 Pa. 504 (1880); 2 PERRY, TRUSTS, 7th ed., §652, n. 98 (1929); 1 SCOTT, TRUSTS §146.1 (1939); 2 STORY, EQUITY JURISPRUDENCE §1384, note a.

[79] Apple v. Allen, 56 N.C. 120 (1856).

bequest for the sole use of a single woman did not give rise to a separate equitable estate in her favor and that upon her subsequent marriage, her husband acquired his normal marital rights in the gift. If, as seems to have been the situation, the bequest involved in the North Carolina case was not made with reference to a marriage that was then in contemplation, the North Carolina court did not preclude itself by its holding from taking the position of the Pennsylvania decisions.

The separate equitable estate could be created by the husband,[80] by the woman herself prior to her marriage,[81] or by a third person.[82]

In courts of equity,[83] as distinct from those of law,[84] a wife's separate equitable estate was not subject to her husband's marital rights; and it was also beyond the reach of his creditors.[85] If, however, a gratuitous transfer of property for the separate use of a married woman left the transferor unable to discharge his existing debts or if it was made in order to place his assets beyond the reach of possible future creditors, it was of course subject to the principles applicable to all fraudulent conveyances and could be impeached by his creditors.[86]

In England[87] and by the weight of authority in the United States,[88] a married woman could alienate her separate equitable estate as if she were a feme sole, in the absence of a statute or a provision in the trust instrument to the contrary. In most of the jurisdictions that followed this rule, her power to alienate extended to real property included in her separate equitable estate,[89] but in a few of them it was confined to personal property and the rents and profits of real property held to her separate use.[90] A minority view existed in some states, however, to the

[80] Alston v. Rowles, 13 Fla. 117 (1869); Re Winn, 57 L.T.R. (N.S.) (Ch.) 282 (1887); Riley v. Riley, 25 Conn. 154 at 163 (1856).

[81] Saunders v. Harris, 38 Tenn. (1 Head) 185 (1858); cf. Brown v. MacGill, 87 Md. 161, 139 A. 613 (1898); Dean v. Brown, 5 B. & C. 336, 108 Eng. Rep. 125 (1826).

[82] Bridges v. Wood, 4 Dana (Ky.) 610 (1836); Small v. Field, 102 Mo. 104, 14 S.W. 815 (1890); Graham v. Londonderry, 3 Atk. 393, 26 Eng. Rep. 1026 (1746).

[83] E.g., Alston v. Rowles, 13 Fla. 117 (1869); Botts v. Gooch, 97 Mo. 88, 11 S.W. 42 (1888); Tullett v. Armstrong, 1 Beav. 1, 48 Eng. Rep. 838 (1838); cf. White v. Clasby, 101 Mo. 162 at 167, 14 S.W. 180 (1890); Perkins v. Elliott, 23 N.J. Eq. 526 at 528 (1872).

[84] Cf. Musson v. Trigg, 51 Miss. 172 at 183 (1875).

[85] E.g., Alston v. Rowles, 13 Fla. 117 (1869); Botts v. Gooch, 97 Mo. 88, 11 S.W. 42 (1889); Izod v. Lamb, 1 C. & J. 35 at 43, 148 Eng. Rep. 1325 (1830).

[86] Cf., e.g., Alston v. Rowles, 13 Fla. 117 at 136 (1869).

[87] See Tullett v. Armstrong, 1 Beav. 1 at 22, 48 Eng. Rep. 838 (1838).

[88] E.g., McCroan v. Pope, 17 Ala. 612 (1850); Imlay v. Huntington, 20 Conn. 145 (1949); Brown v. Kimbrough, 55 Ga. 41 (1875); Harding v. Cobb, 47 Miss. 599 (1873); Lewis v. Yale, 4 Fla. 418 at 424 (1852).

[89] E.g., Brown v. Kimbrough, 55 Ga. 41 (1875); Zeust v. Staffan, 14 App. D.C. 200 (1899); Pride v. Bubb, L.R. 7 Ch. 64 at 69 (1871); cf. Lewis v. Yale, 4 Fla. 418 at 424 (1852).

[90] E.g., Taylor v. Cussen, 90 Va. 40 (1893); cf. Levy v. Darden, 38 Miss. 57 at 64 (1859).

effect that a married woman could not alienate her separate equitable estate unless she was given the power to do so by the terms of the instrument creating it.[91]

Even in the jurisdictions that normally permitted a married woman to alienate her separate equitable estate, a provision in the instrument creating it that forbade such a transfer was upheld.[92] This deviation from the common-law rule against restraints upon alienation, which invalidates a provision restraining the power of alienation in an instrument vesting either a legal or equitable title in fee or for life in a grantee, was established by the courts of equity.[93] They had found that the power of disposition that they had extended to married women over their separate equitable estates was subjecting them to the importunities of their husbands to such an extent as to threaten the security that those estates had been designed to provide for them.[94] A separate equitable estate with an annexed restraint upon its alienation could be created even while the recipient was single; and if she married before disposing of the estate, the restraint became effective and continued throughout the duration of the marriage.[95] If she became discovert and married again without having disposed of the property in the interim, the restraint again became effective during the subsequent marriage.[96]

In the absence of a statute to the contrary, the separate equitable estate of a married woman could not be subjected to the payment of her general debts or obligations not incurred by her upon its faith and credit.[97] In England[98] and by the weight of authority in the United States,[99] however, she could render that estate liable in equity by so

[91] Metcalf v. Cook, 2 R.I. 355 (1852); Dunn v. Dunn, 1 S.C. 350 (1869); cf Wright v. Brown, 44 Pa. 224 (1863). The Florida court in Staley v. Hamilton, 19 Fla. 275 at 296 (1882), erroneously cited Dollner, Potter & Co. v. Snow, 16 Fla. 86 (1877) as having adopted this view.

[92] E.g., Nixon v. Rose, Trustee, 12 Gratt. (Va.) 425 (1855); Tullett v. Armstrong, 1 Beav. 1, 48 Eng. Rep. 838 (1838); Clark v. Jaques, 1 Beav. 36, 48 Eng. Rep. 851 (1838).

[93] Tullett v. Armstrong, 4 My. & Cr. 377, 41 Eng. Rep. 390 (1839); see Robinson v. Randolph, 21 Fla. 629 at 645 (1885); 1 SCOTT, TRUSTS §146.1 (1939).

[94] See Robinson v. Randolph, 21 Fla. 629 at 646 (1885).

[95] Robinson v. Randolph, 21 Fla. 629 (1885); Tullett v. Armstrong, 4 My. & Cr. 377, 41 Eng. Rep. 390 (1839).

[96] See Robinson v. Randolph, 21 Fla. 629 at 646 (1885).

[97] Knox v. Jordan, 58 N.C. 175 (1859); Aguilar v. Aguilar, Lousada and Others, 5 Madd. 414, 56 Eng. Rep. 953 (1820); cf. Dollner, Potter & Co. v. Snow, 16 Fla. 86 (1877).

[98] E.g., Picard v. Hine, L.R. 5 Ch. 274 (1869); Aguilar v. Aguilar, Lousada and Others, 5 Madd. 414, 56 Eng. Rep. 953 (1820).

[99] E.g., McCravey's Admr. v. Todd, 66 Ala. 315 (1880); Dallas v. Heard, 32 Ga. 604 (1861); Coleman v. Wooley's Executor, 10 T.B. Mon. (Ky.) 320 (1850); Lincoln v. Rowe, 51 Mo. 571 (1873); Webster v. Helm, 93 Tenn. 322, 24 S.W. 488 (1894).

contracting as to indicate an intention that it was to be bound, except when she was prohibited from doing so by the instrument that created her estate. That intention could be expressed in the contract or it could be implied from the fact that her separate equitable estate was to derive a benefit from the transaction,[100] or from other circumstances that evidenced it.[101] But in several jurisdictions a married woman could not charge her separate equitable estate unless the instrument that created it authorized her to do so.[102]

*The Wife's Separate Statutory Property*

We have seen that the wife's equity to a settlement gave her a limited protection from the harsh doctrines of the common law that extended to her beneficial interests in ordinary trusts and to her other assets that could be reached only in equity. We have seen, too, that the recognition of her separate equitable estate afforded her a much more extensive protection in the case of her interest in trusts established for her separate use. Her other property interests, however, continued to be subject to the original rules of the common law with reference to the marital rights of her husband long after the fading out of the feudal setting in which those rules had their origin.

To remedy this situation statutes were enacted during the nineteenth century[103] both in England[104] and in the American states[105] that freed the property of a wife either wholly or in part from control

[100] Pentz v. Simonson and Wife, 13 N.J. Eq. 232 (1861); Yale v. Dederer, 22 N.Y. 450 (1860).

[101] E.g., Coleman v. Wooley's Executor, 10 T.B. Mon. (Ky.) 390 (1850); Picard v. Hine, L.R. 5 Ch. 274 (1869). In each of these cases the intention of the wife to subject her separate equitable estate to her obligation was found in the fact that she was living apart from her husband.

[102] Cf., e.g., Wallace v. Wallace, 82 Ill. 530 (1876); Hardy v. Holly, 84 N.C. 661 (1881); MacConnell v. Lindsay, 131 Pa. 476, 19 A. 306 (1890).

[103] SCOTT, TRUSTS §146.1 (1939); 3 VERNIER, AMERICAN FAMILY LAWS 167 (1935); Savage, "Legislation as to Married Women's Property," 22 AM. L. REG. (N.S) 761 at 763 (1883).

[104] Married Women's Property Act, 1882, 45 & 46 Vict., c. 75; Married Women's Property Act, 1870, 33 & 34 Vict., c. 93. These statutes are discussed in volume 16 of HALSBURY'S LAWS OF ENGLAND, 2d ed., 617-622 (1935). The policy that they embody has been further extended by the Law Reform (Married Women and Tortfeasors) Act, 1935, 25 & 26 Geo. V, c. 30.

[105] E.g., Fla. Const. Art. XI, §§1, 2; Fla. Stat. (1949); §§689.11, 693.01, 708.03-708.04, 708.06, 708.08; Mich. Const. Art. XVI, § 8; Mich. Stat. Ann. (1937) §§ 26.161 to 26.163, 26.171, 26.181 to 26.183; Mo. Rev. Stat. (1949) §§442.030, 451.250, 451.290; N.Y. Dom. Rel. Law §§50, 51, 56; N.C. Const. Art. X, § 6; N.C. Gen. Stat. (1950) §§52-1 to 52-15; Pa. Stat. Ann. (Purdon, Supp. 1952) tit. 48, §§31, 32, 71; Pa. Stat. Ann. (Purdon, 1930) tit. 48, §§33 to 44, 64 to 66, 70; Tex. Civ. Stat. (Vernon, 1951) Art. 4614; Va. Code (1950) §§55-35 to 55-37, 55-39, 55-47. The relevant statutes of the different states are summarized on pages 171 to 184 of Volume 3 of VERNIER'S AMERICAN FAMILY LAW (1935), as they existed when that treatise was published.

by her husband. The statutes of the various jurisdictions differ greatly, but in general they provide that the property owned by a wife at her marriage or acquired by her thereafter shall become her separate property. They deprive her husband more or less completely of his common-law marital rights in this property and provide that it shall not be liable for his debts in the absence of a specified type of assent thereto by her; and they give her at least partial control over it. They are referred to as the married women's property acts or married women's rights acts; and under them her property other than her separate equitable estate becomes what is known as her separate statutory property or separate statutory estate.[106] This separate statutory property exists by virtue of the statutes in question and is to be distinguished from the separate equitable estate which arises when the title is vested in someone for the separate use of a married woman.[107]

Because of the due process clause and other provisions in relevant constitutions, the married women's property acts did not extinguish the rights of a husband that had vested in the property of his wife prior to their enactment.[108] They were, however, applicable to mere expectancies of the husband that had not ripened into vested rights at the time the statutes were passed.[109] When, for example, a wife owned a remainder in land following an existing life estate belonging to another, her husband's prospect of acquiring marital rights in the land was a mere expectancy until her estate became possessory; and a statute enacted before the termination of the preceding life estate was effective to prevent the subsequent arising of such rights.[110] Similarly, the married women's property acts control property acquired by a wife after they become effective, even in the case of a previously existing mar-

[106] E.g., Harwood v. Root, 20 Fla. 940 (1884); Dollner, Potter & Co. v. Snow, 16 Fla. 86 (1877); see Robinson v. Randolph, 21 Fla. 629 at 650 (1885); cf. Blood v. Hunt, 97 Fla. 551 at 571, 121 S. 886 (1929).

[107] Kelly v. Turner, 74 Ala. 513 (1883); Dollner, Potter & Co. v. Snow, 16 Fla. 86 (1877); *accord*, Musson v. Trigg, 51 Miss. 172 (1875); see Seedhouse v. Broward, 34 Fla. 509 at 521, 16 S. 425 (1894).

[108] Rose v. Sanderson, 38 Ill. 247 (1865); Rose v. Rose, 104 Ky. 48, 46 S.W. 524 (1898); Westervelt v. Greeg, 12 N.Y. 202 (1854); cf. Tyson v. Mattair, 8 Fla. 107 (1858); Powell v. Bowen, 279 Mo. 280, 214 S.W. 142 (1919); see Allen v. Hanks, 136 U.S. 300 at 306 (1889); Manning v. Manning, 24 Ala. 386 at 387 (1854). *Contra:* Rugh v. Ottenheimer, 6 Ore. 231 (1877). In the latter case, a constitutional provision that the property of a married woman should not be subject to the debts of her husband was applied to the property that she had owned before the adoption of the constitution, although another section of that document provided that existing private rights should not be affected by changes made by the constitution. The court endeavored to sustain its position on the specious ground that since the marriage relation affects the entire public, the marital right of the husband in his wife's property is not strictly a private right.

[109] Baker's Executors v. Kilgore, 145 U.S. 487 (1891); Hill v. Chambers, 30 Mich. 422 (1874); Taylor v. Taylor, 80 Tenn. (12 Lea) 490 (1883).

[110] Prater v. Hoover, 41 Tenn. (1 Cold.) 544 (1860).

riage,[111] and abolish her husband's estate during coverture in present freehold estates so acquired by her.[112]

Although these statutes created married women's separate statutory estates, they did not abolish separate equitable estates that were in existence when the statutes were passed;[113] and, as enacted in most jurisdictions, they do not prevent the creation of such estates thereafter.[114] The powers conferred by statute on married women with respect to their separate statutory property are so broad that separate equitable estates are not now often created in their behalf for the purpose of giving them freedom of action with reference to their assets.[115] In Tennessee, however, the separate equitable estate can still be so employed as to afford needed protection to a wife who might otherwise be induced by the wiles of her husband to make a disadvantageous transfer of her property. This end can be attained in that state even since the enactment of the married women's property acts, by creating a trust for her separate use and coupling with it a restraint upon her power to alienate her interest.[116] This device has rarely been used in recent years, however. The statutes of the District of Columbia[117] and Virginia[118] perhaps sanction the same practice, since they provide not only that separate equitable estates can still be created but also that they are held according to the provisions of the instruments by which they are brought into existence. The Tennessee holding is reasonable; but the few other courts that have passed on the question have taken the contrary position. They have held that when the wife's disabilities of coverture are in large measure removed by statute, the reason that previously existed for permitting a restraint upon her power of alienation, that would not have been sustained in the case of a person *sui juris*, has been extinguished, and that the restraint is invalid.[119]

[111] E.g., Allen v. Hanks, 136 U.S. 300 (1889); see Rose v. Rose, 104 Ky. 48 at 52, 46 S.W. 524 (1898).

[112] See Cole v. Van Riper, 44 Ill. 58 at 65 (1867).

[113] Carpenter v. Browning, 98 Ill. 282 (1881); Bishop v. Safe Deposit & Trust Co. of Baltimore, 170 Md. 615, 185 A. 335 (1936); see Neville v. Cheshire, 163 Ala. 390 at 396, 50 S. 1005 (1909).

[114] Kelly v. Turner, 74 Ala. 513 (1883); Dollner, Potter & Co. v. Snow, 16 Fla. 86 (1877); Lee v. Belknap, 163 Ky. 418, 173 S.W. 1129 (1915); Musson v. Trigg, 51 Miss. 172 (1875); MacConnell v. Lindsay, 131 Pa. 476, 19 A. 306 (1890); Travis v. Sitz, 135 Tenn. 156, 185 S.W. 1075 (1916); Seedhouse v. Broward, 34 Fla. 509 at 521, 16 S. 425 (1894). But cf. Olive v. Walton, 33 Miss. 103 (1857).

[115] Cf. 2 BOGERT, TRUSTS AND TRUSTEES §234 (1935); MADDEN, PERSONS AND DOMESTIC RELATIONS 120 (1931); 1 SCOTT, TRUSTS §146.1 (1939).

[116] Travis v. Sitz, 135 Tenn. 156, 185 S.W. 1075 (1916).

[117] D.C. Code (1951) §30-206.

[118] Va. Code (1950) §55-47.

[119] Cropper v. Bowles, 150 Ky. 393, 150 S.W. 380 (1912); cf. Deering v. Tucker, 55 Me. 284 (1867); Brown v. McGill, 87 Md. 161, 39 A. 613 (1898); Pacific Nat.

The married women's property acts have rendered the wife's equity to a settlement even more completely obsolete than her separate equitable estate. She had that right only in connection with her assets that were within the cognizance of equity. Those assets, including her beneficial interest in trusts other than those for her separate use, fall within the scope of typical married women's property acts and, when obtained by her subsequent to the effective date of such acts, become part of her separate statutory property.[120] Her equity to a settlement cannot exist, therefore, with respect to any interest that she has obtained since the passage of the acts; and few, if any, marriages contracted before that time are subsisting.

It follows that instances are rare in which the rules with reference to the separate equitable estate and the equity to a settlement are important in current transactions. The present state of title to realty, however, is sometimes dependent upon the application of the rules concerning the separate equitable estate. This situation is of course most likely to be encountered in evaluating past transactions involving separate equitable estates that were created before the enactment of the married women's property acts, since those acts largely eliminated the occasion for the creation of such estates thereafter. Probably the benefit most frequently derived today from an understanding of the doctrines of the separate equitable estate and the equity to a settlement lies in the fact that one is enabled thereby to avoid the use of old precedents involving those interests in factual situations to which they have been rendered inapplicable by the married women's property acts.

Under the statutes of some jurisdictions a married woman can convey, transfer or encumber her separate statutory property of all types as if she were a feme sole;[121] but in a number of states her power in these respects is less extensive. The statutes of Florida[122] and several

Bank v. Windram, 133 Mass. 175 (1882). See notes, 28 L.R.A. (N.S.) 426, 428 (1910); 1917A L.R.A. 679. It may be observed, too, that the objective formerly achieved by upholding a restraint upon the power of alienating a separate equitable estate can be attained in most states by establishing an ordinary spendthrift trust for the benefit of the wife. 2 BOGERT, TRUSTS AND TRUSTEES §234 (1935).

120 Cf. 2 BISHOP, LAW OF MARRIED WOMEN §110 (1875).

121 E.g., D.C. Code (1951) §30-201; Mich. Stat. Ann. (1937) §26.161; Mo. Rev. Stat. (1951) §§451.250, 451.290; Travelers Ins. Co. v. Beagles, 333 Mo. 568, 62 S.W. (2d) 800 (1933); N.Y. Dom. Rel. Law §51. The relevant statutes of the different states are summarized on pages 298 to 316 of Volume 3 of VERNIER'S AMERICAN FAMILY LAW (1935), as they existed when that treatise was published.

122 Fla. Stat. (1949) §§693.01, 708.04, 708.08. A married woman can, however, convey her Florida realty other than homestead directly to her husband without his joinder in the deed. Id. §689.11.

other jurisdictions,[123] for example, permit her to convey her real property only by a deed in which she is joined by her husband; and the statutes of Delaware[124] and Texas[125] require her to acknowledge separate and apart from her husband her deeds conveying her separate statutory property. The statutes of North Carolina[126] also require her to acknowledge such deeds, but the acknowledgement of deeds executed since the effective date of section 21 of chapter 73 of the North Carolina Laws of 1945 need not be taken apart from her husband.[127] In some jurisdictions all such special formalities as joinder by the husband and acknowledgment or separate acknowledgment by the wife, as are required by statute in the case of conveyances of her separate statutory real property, are required also in connection with the conveyance of real property that is included in her separate equitable estate;[128] but in other jurisdictions these special statutory requirements are held not to be applicable to her separate equitable estate.[129] Even in the latter jurisdictions, the instrument by which a separate equitable estate is created can of course require joinder by the husband and similar formalities in the conveyance of that estate.[130]

In several states a procedure is established by statute for a married woman under stated circumstances to be declared a free dealer or femesole trader and thereby to acquire greater contractual capacity than she otherwise would have.[131] By complying with this procedure she is enabled in some of these states to convey her real property without the special formalities required by their statutes in the case of other mar-

[123] E.g., Ala. Code (Supp. 1950) tit. 34, §73; N.C. Const. Art. X, §6; N.C. Gen. Stat. (1950) § 52-4; Pa. Stat. Ann. (Purdon, Supp. 1952) tit. 48, § 32; Tex. Civ. Stat. (Vernon, 1951) arts. 1299, 4614.

[124] Del. Rev. Code (1935) §3661.

[125] Tex. Civ. Stat. (Vernon, 1951) art. 1299.

[126] N.C. Gen. Stat. (1950) §§52-2, 52-4, 52-7.

[127] Id., §47-116.

[128] E.g., Taylor v. Cussen, 90 Va. 40, 17 S.E. 721 (1893) (joinder by husband necessary); cf. Louisville, St. L. & T. Ry. v. Stephens, 96 Ky. 401, 29 S.W. 14 (1895) (acknowledgment by wife necessary); TIFFANY, REAL PROPERTY, 3d ed., §485 (1939); see Radford v. Carwile, 13 W. Va. 572 at 665 (1879) (joinder by husband and separate acknowledgment by wife necessary).

[129] E.g., Cadematori v. Gauger, 160 Mo. 352, 61 S.W. 195 (1901) (joinder by husband, which at that time was required in conveyance of separate statutory real property, unnecessary in conveyance of separate equitable estate); Turner v. Shaw, 96 Mo. 22, 8 S.W. 897 (1888); cf. Reizenberger v. Shelton, 86 N.J. Eq. 92, 97 A. 293 (1916); Maiben v. Bobe, 6 Fla. 381 at 414 (1855) (dissenting opinion).

[130] Cf. Maiben v. Bobe, 6 Fla. 381 at 414 (1855) (dissenting opinion); Cadematori v. Gauger, 160 Mo. 352 at 366, 61 S.W. 195 (1901); Reizenberger v. Shelton, 86 N.J. Eq. 92 at 96, 97 A. 293 (1916).

[131] E.g., Fla. Stat. (1949) §§ 62.38 to 62.46; Mass. Ann. Laws (Michie, Supp. 1952) c. 209, §10; Nev. Comp. Gen. Laws (Hillyer, 1929) §§3390 to 3394; Pa. Stat. Ann. (Purdon, 1930) tit. 48, §§41-44; Tex. Civ. Stat. (Vernon, 1951) art. 4626. Similar statutes previously in effect have been repealed in recent years in a number of juris-

ried women. Thus in Florida[132] and Pennsylvania,[133] a free dealer can convey without the joinder of her husband that in those states is a prerequisite to the validity of conveyances of other married women. In North Carolina, however, at a time when the statutes[134] provided a method by which a married woman could be registered as a free dealer, it was held that compliance with those statutes did not empower her to convey her real property without the joinder of her husband;[135] and the Texas statute[136] under which a married woman may be declared a free dealer "for mercantile and trading purposes" doubtless does not dispense with the special formalities required in that state[137] in the case of conveyances by other married women. Even in Pennsylvania where as previously stated a free dealer can convey her other real property without the joinder of her husband, it has been held that such joinder is necessary in a conveyance of her separate equitable estate.[138]

*Respective Duties of the Husband and Wife with Reference to the Support of the Family*

The statutes that abrogate or diminish the husband's marital rights in the property of his wife ordinarily do not themselves otherwise change the relationship existing between them or relieve him from the obligation to support her and the family or from the other responsibilities that he had at common law.[139] These duties of the husband had their origin at a time when he could use in discharging them the proceeds available as a result of his marital rights in any property owned by his wife; and their continued existence since those marital rights were extinguished or greatly reduced in scope has often been deplored. More than seventy-five years ago the following comment was made about the married women's rights act then in effect in Massachusetts:

". . . the act . . . leaves but little, as respects property and personal rights, to be complained of by the most ardent advocate of

dictions as having been rendered unnecessary by other statutes that have greatly extended the contractual capacity of all married women. E.g., N.C. Laws 1945, c. 635.

132 Lerch v. Barnes, 61 Fla. 672, 54 S. 763 (1911).

133 Wilson v. Coursin, 72 Pa. 306 (1872); cf Thornton v. Pierce, 328 Pa. 11, 194 A. 897 (1937).

134 N.C. Gen Stat. §§52.22, 52.23 (1943). These statutes have since been repealed. N.C. Laws 1945, c. 635.

135 Council v. Pridgen, 153 N.C. 443, 69 S.E. 404 (1910).

136 Tex Civ. Stat. (Vernon, 1951) art. 4626.

137 Tex. Civ. Stat. (Vernon, 1951) art. 1299 (requiring separate acknowledgment by wife); id., art. 4614 (requiring joinder by husband).

138 People's Sav. Bank v. Denig, 131 Pa. 241, 18 A. 1083 (1890).

139 Rogers v. Newby, (Fla. 1949) 41 S. (2d) 451 (holding that husband continues liable for wife's pure tort); cf. Citizens' St. Ry. v. Twiname, 121 Ind. 375, 23 N.E. 159 (1890); Snyder v. People, 26 Mich. 106 (1872); see Coleman v. Burr, 93 N.Y. 17 at 24 (1883); Alexander v. Alexander, 85 Va. 353 at 367, 7 S.E. 335 (1888).

> the policy which yields to wives the double advantages of matrimony and single bliss, and lifts from the shoulders of their husbands none of the burdens borne when the law gave them compensatory advantages. It remains only to add a provision compelling every young man to marry instantly the girl who chooses him, and the end of domestic woe will have come in Massachusetts. Then she can have, as she can have now if the man will submit to the marriage, for her sole and separate use, to accumulate till her husband dies, all that she owned before her marriage, all that comes to her afterward, and all that she can acquire by her labor and skill; while he provides for her house room, meals, clothing, and the other necessaries of life. . . . If she chooses, she may employ her time with domestic cares; or if she chooses, she may leave her babes for him to look after and nurse, and her meals for him to prepare with his own, while she engages in business on her separate account, and accumulates money—not a cent of which or its increase is she required to appropriate to the support of her family or even of herself,—all must be borne by the husband."[140]

Similar complaints, couched, however, in more temperate language, have been voiced in recent years.[141] As a concession to this view, statutes have been enacted in a number of jurisdictions that impose upon the wife[142] or upon her property,[143] generally[144] or under stated circumstances,[145] a liability for all[146] or for specified portions[147] of the family expenses. Some of these statutes expressly require a wife to support her husband out of her separate property when he has not deserted her and is both without means and unable from infirmity to

[140] 2 BISHOP, LAW OF MARRIED WOMEN §727 (1875).

[141] 3 VERNIER, AMERICAN FAMILY LAWS 170 (1935); cf. Haskins, "Estate by the Marital Right," 97 UNIV. PA. L. REV. 345 at 352 (1949).

[142] E.g., N.D. Rev. Code (1943) §14-0708; Banner Mercantile Co. v. Hendricks, 24 N.D. 16, 138 N.W. 993 (1912).

[143] E.g., Colo. Stat. Ann. (1935) c. 83, §10; Ill. Ann. Stat. (Smith-Hurd, 1936) c. 68, §15; Iowa Code (1946) §597.14; Mo. Rev. Stat. (1949) §§451.250, 451.260 (wife's personal property and annual products of her real estate liable for debts incurred by her husband for necessaries for the family).

[144] E.g., Ill. Ann. Stat. (Smith-Hurd, 1936) c. 68, §15.

[145] E.g., Neb. Rev. Stat. (1952 reissue) §42-201 (property of wife, with stated exceptions, liable for necessaries furnished the family, only after execution against her husband has been returned unsatisfied); Pa. Stat. Ann. (Purdon, 1930) tit. 48, §116 (property of wife liable for debts contracted by her for necessaries furnished the family, only after execution against her husband has been returned unsatisfied).

[146] E.g., Colo. Stat. Ann. (1935) c. 83, §10; Ill. Ann. Stat. (Smith-Hurd, 1936) c. 68, §15; Iowa Code (1946) §597.14.

[147] E.g., Neb. Rev. Stat. (1952 reissue) §42-201 (property of wife liable only for necessaries furnished the family); Pa. Stat. Ann. (Purdon, 1930) tit. 48, §116 (wife liable only for debts contracted by her for articles necessary for the support of the family).

support himself.[148] Even a diamond shirt stud bought and used by a husband has been held to be a family expense for which his wife is liable under the statute[149] that is in effect in Iowa;[150] but under an identical Illinois statute,[151] a ring bought by a spouse for his own use is not regarded as such an expense.[152] In many states no statute rendering the wife liable for family expenses has been passed.

It frequently is said that the imposition of this liability on the wife should be extended, not only by the enactment of such statutes in jurisdictions where there now are none, but also by broadening the scope of many of the existing statutes. The argument for this position is based on sympathy for an impecunious husband married to an extravagant wife of means, on a desire to protect credit-extending tradesmen who are misled as to the financial status of a husband by the expenditures of his more affluent wife, and on the fact that the husband no longer has the rights in his wife's property that compensated him at common law for the duty placed on him alone to support his wife and family.

Statutes of general application should, however, be evaluated on the basis of their total effect rather than on their operation in a rarely occurring situation. Although much of the wealth of the nation is in feminine hands, the opulent wife who unreasonably declines to aid an unfortunate husband is still the exception. Far more typical is the family of little means in which the wife has a small inheritance or meager personal earnings of which she should not be deprived against her will because of the failure of an improvident husband to make proper efforts to support his family. Larger numbers of married women, to be sure, are gainfully employed than in the past, but most women still forego their opportunity for a financially remunerative career when they marry; and if marital difficulties become intolerable or misfortune overtakes them years later, it is often difficult or impossible for them to earn a livelihood. It is submitted that any assets that they have or acquire during the marriage may well be preserved from being dissipated without their consent. When the desirability of retaining for them this safeguard is weighed against the advantage of relieving one who furnishes supplies for the family from the necessity of investigating the credit standing of the husband, the latter does not bulk large.

148 E.g., N.D. Rev. Code (1943) § 14-0703.
149 Iowa Code (1946) §597.14.
150 Neasham v. McNair, 103 Iowa 695, 72 N.W. 773 (1897).
151 Ill. Ann. Stat. (Smith-Hurd, 1936) c. 68, §15.
152 Cf. Hyman v. Harding, 162 Ill. 357, 44 N.E. 754 (1896).