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REFORMATION OF INSTRUMENTS-MISTAKE-DEED OF MARRIED WOMAN

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REFORMATION OF INSTRUMENTS—MISTAKE—DEED OF MARRIED WOMAN—In 1887 one Evans deeded to Mattie Woodbridge a lot described in the deed as lot 31, believing that the lot described was lot 29. Mattie took possession of lot 29, and held it until October 7, 1913, when she deeded it by the same description as in the original deed to one Casto, an intermediary, who then deeded it to William, Mattie's husband. Husband and wife continued in possession of lot 29 until her death in 1919. Lot 31, the lot described in the deed of 1887, continued in the possession of Evans and his successors until 1905, when it was deeded to Mattie. She then took possession and continued to hold and possess lot 31 until 1919. When Mattie died, William took a life estate in all her realty, remainder to Mattie's heirs. The misdescription in the deeds was first discovered when Mattie's heirs brought suit after William's death in 1939 for the partition of the real estate of which Mattie had died seised. Prayer of the present suit was that William Woodbridge be declared to be the true owner of lot 29, and that, if necessary for the purpose, the deeds from Mattie Woodbridge to Casto, and from Casto to William Woodbridge be reformed to effectuate the true intentions of the parties to the deeds. *Held*, under the law as it existed on October 7, 1913,¹ equity will not reform a deed

¹ W. Va. Code Ann. (Hogg, 1913) § 3671: "Any married woman may take by inheritance or by gift, grant, devise or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property and any interest or estate therein, and the rents, issues and profits thereof, in the same manner, and with like effect as if she were unmarried. . . ."

made by a married woman to cover land it was intended to include but failed to so include by reason of mutual mistake of fact. *Stealey v. Lyons*, (W. Va. 1946) 37 S.E. (2d) 569.

Earlier statutes, giving a married woman the right to convey her own property, but retaining restrictions on her power to contract, made possible the unfortunate result of the principal case, in which reformation of an executed conveyance by the married woman was refused even though a mistake in expression was clearly proved. This result rests on an analysis of the reformation remedy as essentially a remedy for specific enforcement of contract; since the grantor lacks the power to contract, the correction of the deed through proof of the unexpressed intent is precluded. The conclusion reached in the principal case finds support in decisions in other states, rendered during the intermediate period while the rules as to married women's capacity were in a process of piecemeal extension.² That it is not an inevitable conclusion is indicated, however, by an Indiana decision of the same period, in which reformation was granted at the suit of a grantee from the married woman for a mistake in the description of the property conveyed. The reason given for awarding reformation was essentially the inequity of permitting an executed conveyance, completely conforming to statutory requirements for an effective deed, to stand uncorrected when it failed to accomplish the intended object.³ On this analysis reformation of the deed does not depend on the enforcement of a contract independent of and differing from the language of the deed; the married woman's power to convey has already been effectively exercised and the written document in which her intent is expressed is reformed in order to avoid what would otherwise be an unjust distortion of her own purpose as grantor.⁴ While this reasoning involves a refinement of analysis, it is strongly supported by results in the analogous situation of contracts within the Statute of Frauds, where reformation is sought by the use of parol evidence which would be insufficient for purposes of specific performance of contract. While a difficulty similar to that felt by the court in the principal case has led the Massachusetts court to refuse reformation of an executed deed for the purpose of adding to (rather than subtracting from) the grant,⁵ most courts reject any such limitation in the case of executed deeds.⁶ This problem has largely been done away with by modern statutes. The married woman has capacity to contract in all jurisdictions, and her power to contract is that of a feme sole in most states. In the latter case there is no doubt that she may make any contract which a competent man could make, and that she will be held liable on such a contract in the ordinary way.⁷ Some statutes, however, give the wife only the power to make contracts relating to her separate estate.

² *Martin v. Hargardine*, 46 Ill. 322 (1868); *Petesck v. Hambach*, 48 Wis. 443, 4 N.W. 565 (1880); *Shroyer v. Nickell*, 55 Mo. 264 (1874).

³ *Hamar v. Medsker*, 60 Ind. 413 (1878).

⁴ *Styers v. Robbins*, 76 Ind. 547 (1881); see also 7 CENT. L. J. 434 (1878); *id.* 182; 8 CENT. L. J. 42 (1879).

⁵ *Glass v. Hulbert*, 102 Mass. 24 (1869).

⁶ 3 POMEROY, EQUITY JURISPRUDENCE, 5th ed. § 867 (1941). It is virtually impossible to classify the decisions involving reformation of an executory contract relating to land, and within the Statute of Frauds, but many American authorities allow its reformation whether a deed has subsequently been executed in conformity with the written contract, or not.

⁷ MADDEN, PERSONS AND DOMESTIC RELATIONS, § 47 (1931).

This provision is interpreted in various ways. It includes whatever is necessary to the full enjoyment and use of the property, but does not include contracts that may be only of some incidental benefit.⁸ An executory contract by a married woman to purchase property has been held by most, though not all, courts to be a contract in relation to her separate estate.⁹ Surety contracts are in some jurisdictions expressly forbidden, and sometimes held not to relate to her separate estate. Generally this does not of itself prevent her from conveying, mortgaging or pledging her separate estate to pay or secure the debt of another. As stated by a Pennsylvania court, ". . . what the statute prohibits is the incurring of a personal liability for the forbidden purpose, a liability that carries the risk of a general judgment."¹⁰ On the other hand, some statutes specifically provide that such a conveyance cannot be made. To the extent that limitations on the married woman's power to contract survive, concurrently with broad powers to convey her separate estate, difficulties of the sort experienced by the court in the principal case may be expected to arise where reformation is sought of her executed transfers. It is to be hoped, however, that a closer analysis of the nature and effect of the reformation remedy will permit its use so as to give effect to a clearly proved but inaccurately expressed intent.¹¹

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⁸ *Russel v. People's Savings Bank*, 39 Mich. 671 (1878).

⁹ MADDEN, *PERSONS AND DOMESTIC RELATIONS*, § 47 at p. 139 (1931); but see *Jones v. Crosthwaite*, 17 Iowa 393 (1864).

¹⁰ *Herr v. Reinoehl*, 209 Pa. 483 at 487, 58 A. 862 (1904).

¹¹ See 3 VERNIER, *AMERICAN FAMILY LAWS*, § 152 (1935), for statement of the law in all states.