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MARRIED WOMEN TRADERS.

THE discussion of this subject will fall under two main heads, first, the sources of married women's capacity to trade, how far they could trade at common law and in equity, and the effect of modern statutes; and second, the incidents of married women's capacity to trade—their rights, powers, obligations and disabilities, when engaged in trade under some common law, equitable or statutory capacity. Many points not directly involved must be referred to for the purpose of argument and illustration, and on such points the cases are not collected in this paper.

I. SOURCES OF MARRIED WOMEN'S CAPACITY TO TRADE.

Sect. 1. *General view.*—(a). *At Common Law generally*, a married woman could make no contract whatever; *Norris v. Lantz*, 18 Md. 260, 269; all her time and labor belonged to her husband (*Seitz v. Mitchell*, 94 U. S. 580, 584), as did all the present enjoyment of her property. See *Mann's Appeal*, 50 Penn. St. 375, 381. She had in fact no legal existence apart from her husband: *White v. Wager*, 25 N. Y. 325, 328; therefore she could not trade at all: *Carey v. Burruss*, 20 W. Va. 571, 575; 43 Am. Rep. 790; see *Bradstreet v. Baer*, 41 Md. 19, 23; *Netterville v. Barber*, 52 Miss. 168, 171; *McKinnon v. McDonald*, 4 Jones' Eq. 1. If a female trader married, the trade became her husband's (*Ashworth v. Outram*, L. R., 5 Ch. Div. 923, 929), and if she had been trading as partner, the partnership was dissolved: *Alexander v. Morgan*, 31 Ohio St. 546, 550. But when owing to her husband's

abandonment of the state, &c., she had the capacities of a feme sole (see Stewart Mar. & Div., sect. 177), and in some places by custom (*Carey v. Burruss*, 20 W. Va. 571, 575, 43 Am. Rep. 790), a married woman could trade as if unmarried.

(b). *Wife's Earnings*.—As a married woman could not contract at all by the common law, she could not enter into any kind of engagement or employment on her own account, but all her time, services, wages and earnings of every kind, belonged to her husband: *Cecil v. Juxon*, 1 Atk. 278, 279; *Glenn v. Johnson*, 18 Wall. 476, 478; *McLemore v. Pinkston*, 31 Ala. 267, 270; *Hinman v. Parkis*, 33 Conn. 188, 197; *Hazelbaker v. Goodfellow*, 64 Ill. 238, 241; *Cranor v. Winters*, 75 Ind. 301, 303; *Glover v. Alcott*, 11 Mich. 471, 482; *Raybold v. Raybold*, 20 Penn. St. 308, 311; *Hallowell v. Horter*, 35 Id. 375, 380. Still her husband could agree that she should have her earnings, just as he could invest her with any property of his, except as against his creditors, and his agreement would be enforced in equity: *McLemore v. Pinkston*, 31 Ala. 267, 269; *Peterson v. Mulford*, 36 N. J. L. 482, 487; *Hoyt v. White*, 46 N. H. 45, 47; *Elliott v. Bentley*, 17 Wis. 591, 596. His agreement, however, could give her no personal capacity, but only the right, in his place and stead, to collect and keep the wages or rewards of her labors: *Uhrig v. Horstman*, 8 Bush 172, 177; Stewart Mar & Div., sect. 181. So by statute, in most states, the wife's earnings are secured to her separate use: see *Martin v. Robson*, 65 Ill. 129, 135, 16 Am. Rep. 578. These statutes were passed to protect wives from shiftless, improvident and dissipated husbands (*Youngworth v. Jewell*, 15 Nev. 45, 47), and were in form the earliest of the statutes relating to the trade of married women.

(c) *The Increase of Wives' Separate Property*.—Although at common law all the interest, profits, rents and increase of a married woman's property vested in the husband just as the property itself did, except that the rents and profits of real estate vested in him as personalty, she had her separate estate first in equity and then by statute, and the increase of such estate was also separate property: *Gore v. Knight*, 2 Vern. 535; *Barrack v. McCulloch*, 3 Kay & J. 110, 119; *Hoot v. Sorrell*, 11 Ala. 386, 399, 404; *Sanford v. Atwood*, 44 Conn. 141, 143; *Bongard v. Core*, 82 Ill. 19, 21; *Stout v. Perry*, 70 Ind. 501, 504; *Russell v. Long*, 52 Iowa 250, 252; *Hanson v. Millett*, 55 Me. 184, 189; *Hill v.*

Chambers, 30 Mich. 422, 429; *Williams v. McGrade*, 13 Minn. 46, 52; *Hutchins v. Colby*, 43 N. H. 159, 161; *Knapp v. Smith*, 27 N. Y. 280; *Holcomb v. Meadville*, 92 Penn. St. 338, 343; *Nelson v. Hollins*, 9 Baxt. 553, 554; *Braden v. Gose*, 57 Tex. 37, 40; *Dayton v. Walsh*, 47 Wis. 113, 118; and therefore the products of all investments or uses of her separate property, though such products result in part from her own efforts and from the labor, skill and knowledge of her husband: *Aldridge v. Muirhead*, 101 U. S. 397, 399; *Stout v. Terry*, 70 Ind. 501, 504; *Cooper v. Ham*, 49 Id. 393, 400; *Langford v. Grierson*, 5 Bradf. 361, 365; *Russell v. Long*, 52 Iowa 250, 252; *Miller v. Peck*, 18 W. Va. 75, 79-97. In a sense, therefore, as will be shown below, she can trade with her separate property.

(d). *Summary of Sources*.—So that a married woman may be found on her own account earning money, trading or in business—the meaning of these words will be defined below—by virtue (1) of her right to her *earnings*, depending on her husband's consent or on statute; or (2) of her ownership of equitable or statutory *separate property*; or (3) of her capacities as a *feme sole*, due to the peculiar conduct of her husband or to statute; or (4) of her capacity to *trade*, due to custom or to statute.

Sect. 2. *Definitions*.—*Earnings, Trade, Business, etc.*—Although the distinction between personal earnings and the increase of property is quite clear (see *Mitchell v. Sawyer*, 21 Iowa 582, 583; also, *supra*), and for this reason, as hereinafter shown, married women's separate property acts do not destroy a husband's rights to his wife's personal services: *Glover v. Alcott*, 11 Mich. 470, 480; it is very hard to draw any line between personal earnings and the profits of trade in which property is used. See *Haight v. McVeagh*, 69 Ill. 624, 629; *Dayton v. Walsh*, 46 Wis. 113, 120. The terms used in the books in connection with married women's trade are not sharply defined, and their meaning has given rise to considerable discussion.

(a). *Earnings*.—"Earnings" are what is earned, gained or merited by labor, services or performances, wages or reward: *Dayton v. Walsh*, 47 Wis. 113, 120; and the earnings secured to a married woman by a statute are not confined to the results of manual labor—to wages for washing or sewing—but include the products of trade also: *Haight v. McVeagh*, 69 Ill. 624, 628; and the stock in trade of a married woman, bought with her earn-

ings, is included within the term earnings: *Lovell v. Newton*, L. R., 4 C. P. Div. 7, 11, 12.

(b). *Trade and Business*.—"Trade" or "business" means an employment to which the party devotes a considerable portion of her time, skill and means (*Holmes v. Holmes*, 40 Conn. 117, 119)—a business that is continuing in its nature and embraces many transactions: *Holmes v. Holmes*, 40 Conn. 117, 119; *Proper v. Cobb*, 104 Mass. 589, 590). Engaging in trade and business means not only trading in a commercial sense, but also being engaged in other employments which require time, labor and skill: *Netterville v. Barber*, 52 Miss. 168, 171; it means engaging in a business pursuit, mechanical, manufacturing or commercial: *Nash v. Mitchell*, 71 N. Y. 200, 203. To illustrate: Though a single transaction may be a business one, it does not make the party a trader: *Holmes*, 40 Conn. 117, 119; *Netterville v. Barber*, 52 Miss. 168, 171; horse-dealing may be a business, but a woman who buys or sells a single horse is not necessarily in that business: *Holmes v. Holmes*, 40 Conn. 117, 120; *Proper v. Cobb*, 104 Mass. 589, 590; so, farming may be a business, but employing a man to work on one's farm does not make one a farmer by trade: *Holmes v. Holmes*, 40 Conn. 117, 120; renting a house may be a business transaction, and for the purposes of trade: *Knowles v. Hull*, 99 Mass. 562, 564; but a lease of rooms is not necessarily the contract of a trader: *Holmes*, 40 Conn. 117, 119; so a married woman's receipt and disbursement of her rents and profits, though done in a business way, does not constitute her a trader: *Proper v. Cobb*, 104 Mass. 589, 590; *Nash v. Mitchell*, 71 N. Y. 200, 203; nor is she a trader when she is not acting generally with the public, but is simply taking care of her own property: *Proper v. Cobb*, 104 Mass. 589, 590; or collecting or investing her income: *Wheeler v. Raymond*, 130 Mass. 247, 248, 249; *Nash v. Mitchell*, 71 N. Y. 200, 203. When she may trade she is not confined to any particular trade: *Guttman v. Scannell*, 7 Cal. 455, 459; she may not only engage in washing or sewing (*Haight v. McVeagh*, 69 Ill. 624, 628), dressmaking or millinery (*Jassoy v. Delius*, 65 Id. 469, 471; *Tuttle v. Hoag*, 46 Mo. 38, 40), keeping a dairy (*Krouskop v. Shontz*, 51 Wis. 204, 205, 207), keeping a boarding-house (*Chapman v. Briggs*, 11 Allen 546, 547; *Daves v. Rodier*, 125 Mass. 421, 423; *Harnden v. Gould*, 126 Id. 411, 412), keeping a grocery or provision store (*Haight v. McVeagh*, 69 Ill. 624, 628; *Abbey*

v. *Deyo*, 44 Barb. 374, 382), and in other pursuits specially adapted to her sex (*Guttman v. Scannell*, 7 Cal. 455, 459); but she may be a farmer (*Camden v. Mullen*, 29 Cal. 564, 566; *Snow v. Sheldon*, 126 Mass. 332, 333; *Chapman v. Foster*, 6 Allen 136, 138; *Abbey v. Deyo*, 44 Barb. 374, 382; *Krouskop v. Shontz*, 51 Wis. 204, 205, 207; but see *McDaniel v. Cornwell*, 1 Hill S. C. 428, 429), a miller (*Cooper v. Ham*, 49 Ind. 393, 416), a saloon or tavern-keeper (*Porter v. Gamba*, 43 Cal. 105, 108; *Nispel v. Laparle*, 74 Ill. 306, 307; *Silveus v. Porter*, 74 Penn. St. 448, 449), a clothier (*Guttman v. Scannell*, 7 Cal. 455, 456; *Bellows v. Rosenthal*, 31 Ind. 116, 117), an ironmonger (*Abbey v. Deyo*, 44 Barb. 374, 382); she may work a mine or quarry, or may go into the lumber business: *Netterville v. Barber*, 52 Miss. 168, 172; though, if her trade is unsuited to her, this is a fact to be considered, if her husband's creditors are trying to show that the business is really his: *Guttman v. Scannell*, 7 Cal. 455, 459. So, she may engage in the professions—may devote her talents to literature, acting, singing (*Dayton v. Walsh*, 46 Wis. 113, 120); and, in fact, under a general power to trade, may follow any legitimate calling: *Guttman v. Scannell*, 7 Cal. 455, 459; *Haight v. McVeagh*, 69 Ill. 624, 628; *Chapman v. Briggs*, 11 Allen 546, 547.

(c). *Separate Trade*.—The trade of a married woman is usually spoken of as her “*separate*” trade; but the word “*separate*” refers rather to her independent status than to the mode in which she shall trade (*Zimmerman v. Erhard*, 58 How. Pr. 11, 14); and it does not mean that she shall trade alone, or prevent her living with her husband while trading (*Lovell v. Newton*, L. R., 4 C. P. D. 7, 12; *Newbrick v. Dugan*, 61 Ala. 251, 253; *Parker v. Simonds*, 1 Allen 258, 260), or allowing him to join in the business: *Guttman v. Scannell*, 7 Cal. 455, 459. In some states, however, it has been held that she must keep her business separate (*Haas v. Shaw*, 91 Ind. 384, 389, 396), or separate from her husband (*Lord v. Parker*, 3 Allen 127, 129), and that the joint and mingled earnings of husband and wife are his property: *Hawkins v. Providence*, 119 Mass. 596, 599.

Sect. 3. *Capacity to Trade at Common Law*.—At common law when a husband was civilly dead, had abjured the realm, etc., his wife had the status of an unmarried woman (see Stewart Mar. & Div., sects. 175–178), and, therefore, could trade as such (*Carey*

v. *Burruss*, 20 W. Va. 571, 575, 43 Am. Rep. 790); and in some states there are statutes to this effect declaratory of the common law. See *Hannon v. Madden*, 10 Bush 664, 667; *Woodcock v. Reed*, 5 Allen 207, 208. So, by the custom of London and other places a married woman carrying on trade apart from her husband had the capacities of a *feme sole* (*Petty v. Anderson*, 2 C. & P. 38, 39; *Beard v. Webb*, 2 Bos. & P. 93, 97; *Lovie v. Phillips*, 3 Burr. 1776, 1783; *Netterville v. Barber*, 52 Miss. 168, 171; *Carey v. Burruss*, 20 W. Va. 571, 575; 43 Am. Rep. 790); but such a custom has never existed in this country (see *Jacobs v. Featherstone*, 6 W. & S. 346), except in South Carolina: (*McDaniel v. Cornwell*, 1 Hill S. C. 428, 429; *Newbiggin v. Pellans*, 2 Bay 162, 165; *Dial v. Neuffer*, 3 Rich. 78, 79.)

Sect. 4. *Capacity to Trade in Equity*.—In those states where a married woman is a *feme sole* in equity as to her equitable separate estate, she may use the same in trade, and the profits of such trade are equitable separate property likewise: *Johnson v. Gallagher*, 3 DeGex, F. & J. 494, 509; *Jarman v. Wooloton*, 3 Term 618, 622; *Conklin v. Doul*, 67 Ill. 355, 357; *Jenkins v. Flinn*, 37 Ind. 349, 352; *Stevens v. Reed*, 112 Mass. 515; *Penn v. Whitehead*, 17 Gratt. 503, 512, 513; *Partridge v. Stocker*, 36 Vt. 108, 115; *Carey v. Burruss*, 20 W. Va. 571, 579; *Todd v. Lee*, 16 Wis. 480, 483; but in such trade she has no personal capacities: *Conklin v. Doul*, 67 Ill. 355, 357; *Tuttle v. Hoag*, 46 Mo. 38, 41; cases last cited. Equity recognises her separate existence only with respect to her separate property, and her contracts made in the course of her trade can be collected only if they have been properly charged on said property. See *Todd v. Lee*, 16 Wis. 480, 483. In those states where she has, as to her equitable separate property, only the powers expressly given her, she can, of course, exercise only such powers.

Sect. 5. *Capacity to Trade with consent of Husband*.—A husband cannot, by his consent, change the personal status of his wife (Stewart Mar. & Div., sect. 181), or enable her to trade with the capacities, rights and liabilities of a *feme sole* (*Uhrig v. Horstman*, 8 Bush 172, 177); but he may allow her, as his agent, to engage in business and to retain the profits (*Ashworth v. Outram*, L. R., 5 Ch. Div. 923, 931); or he may agree, before or after marriage, that she shall keep her earnings or carry on business for her own use (*Penn v. Whitehead*, 17 Gratt. 503, 512); and he

may give her, if he chooses, the necessary capital to start with: *Lockwood v. Collin*, 4 Robt. 129, 136. Any such gift of earnings, profits or property, is good, at least in equity, against himself; (see *Jarman v. Wooloton*, 3 Term 618, 622; *Ashworth v. Outram*, L. R., 5 Ch. Div. 923, 931; *Oglesby v. Hall*, 30 Ga. 386, 390; *Jenkins v. Flinn*, 37 Ind. 349, 352; *Conklin v. Doul*, 67 Ill. 355, 357; *Fisk v. Cushman*, 6 Cush. 20, 29; *Cropsey v. McKinney*, 30 Barb. 47, 57; *Samms v. McLaughlin*, 35 N. Y. 647, 650; *Penn v. Whitehead*, 17 Gratt. 503, 512; *Richardson v. Merrill*, 32 Vt. 27, 36; *Carey v. Burruss*, 20 W. Va. 571, 579; *Stimson v. White*, 20 Wis. 562, 563); and his heirs, voluntary assigns, etc., (*Richardson v. Merrill*, 32 Vt. 27, 36); but not against his creditors (*Uhrig v. Horstman*, 8 Bush 172, 176; *Cropsey v. McKinney*, 30 Barb. 47, 57; *McKinnon v. McDonald*, 4 Jones Eq. 1, 6), unless on valuable consideration: *Penn v. Whitehead*, 17 Gratt. 503, 512. When a wife thus trades under a settlement from or agreement with her husband, she takes in equity as with equitable separate property (*Penn v. Whitehead*, 17 Gratt. 503, 513); at law the business, profits, etc., are absolutely the husband's: *Stimson v. White*, 20 Wis. 562, 563. If the husband's consent to his wife's trading is by mere oral assent and without consideration, though he cannot ask back profits already made and collected by her (see *Green v. Pallas*, 12 N. J. Eq. 267, 268; *Partridge v. Stocker*, 36 Vt. 108, 114), he can revoke his consent and claim the business as his own: *Conklin v. Doul*, 67 Ill. 355, 357; *Stimson v. White*, 20 Wis. 562, 563. If she carries on her business independently of her husband with equitable separate property, though by his consent, provided that he takes no part therein and gives the world no right to trust his credit: (see *Wortman v. Price*, 47 Ill. 22, 24; *Shackelford v. Collier*, 6 Bush 149, 159; *Alt v. Lafayette*, 9 Mo. App. 91; *Pawley v. Vogel*, 42 Mo. 291; *Lyman v. Place*, 26 N. J. Eq. 30; *National Bank v. Sprague*, 20 Id. 13, 25; *Quidort v. Pergeaux*, 18 Id. 472, 480; *Bucher v. Ream*, 68 Penn. St. 421, 426); or provided that all the credit is given to her (*Jenkins v. Flinn*, 37 Ind. 349, 352; *Tuttle v. Hoag*, 46 Mo. 38, 42, see *Harvey v. Norton*, 4 Jur. 42, 43; *Pearson v. Darrington*, 32 Ala. 227, 241, 242; *Taylor v. Shelton*, 30 Conn. 122, 127, 128; *Morris v. Root*, 65 Ga. 686, 688; *Connerat v. Goldsmith*, 6 Id. 14; *Meiners v. Munsen*, 53 Ind. 138, 142; *Weisker v. Lowenthal*, 31 Md. 413

418; *Powers v. Russell*, 26 Mich. 179; *Hill v. Goodrich*, 46 N. H. 41; *Wilson v. Herbert*, 41 N. J. L. 454, 461; *Happek v. Hartby*, 7 Baxt. 411, 414; *Roberts v. Kelley*, 57 Vt. 97, 101), he is not liable; nor is she (*Tuttle v. Hoag*, 46 Mo. 38, 41; *Conklin v. Doul*, 67 Ill. 305, 308), though her equitable separate estate may be, if properly charged. But if she is merely doing business in her husband's place and stead with his consent, she is merely his agent and the business is his; he may claim the profits (*Switzer v. Valentine*, 4 Duer 96, 99; *Stimson v. White*, 20 Wis. 562, 563), the business is liable to his creditors (see *Patton v. Gates*, 67 Ill. 164, 167; *Wilson v. Loomis*, 55 Id. 352, 355; *Clinton v. Hummell*, 25 N. J. Eq. 45, 47), and he is liable for the debts of the business: *Barlow v. Bishop*, 1 East 432, 434; *Godfrey v. Brooks*, 5 Harr. (Del.) 396, 397; *Conklin v. Doul*, 67 Ill. 355, 357; *Jenkins v. Flinn*, 37 Ind. 349, 352; *Cropsey v. McKinney*, 30 Barb. 47, 57; *Barton v. Beer*, 35 Id. 78, 79; *Switzer v. Valentine*, 4 Duer 96, 99; *Swasey v. Antram*, 24 Ohio St. 87, 95; *Jacobs v. Featherstone*, 6 W. & S. 347, 349; *Partridge v. Stocker*, 36 Vt. 108, 114. Whether the business is really his or hers is a question of fact: *Jarman v. Wooloton*, 3 Term 618, 622; *Glover v. Alcott*, 11 Mich. 471, 479; *Abbey v. Deyo*, 44 N. Y. 343; *Partridge v. Stocker*, 36 Vt. 108, 113. What has been said under this section applies only where no statute has changed the common law as to married women's disabilities. Under the statutes, generally, the husband's consent is not necessary to enable a wife to trade, nor does his mere consent involve him in the liabilities of the business.

Sect. 6. *Capacity under Separate Property Acts*.—As a general rule, statutes which secure to married women the separate enjoyment of their *property*, do not change their *personal* status (see Md. Law Record, March 1, 1884)—a rule analogous to the rule in equity, that equity recognises married women's separate existence only in connection with their separate property. These acts do not by implication destroy the husband's common-law right to his wife's earnings (*Seitz v. Mitchell*, 94 U. S. 580, 584; *McLemore v. Pinkston*, 31 Ala. 267, 270; *Bear v. Hays*, 36 Ill. 280, 281; *Connor v. Berry*, 46 Id. 370, 372; *McMurtry v. Webster*, 48 Id. 123, 124; *Marshall v. Duke*, 51 Ind. 62; *Duncan v. Roselle*, 15 Iowa 501, 503; *Merrill v. Smith*, 37 Me. 394, 396; *Glover v. Alcott*, 11 Mich. 470, 482; *Apple v. Ganong*,

47 Miss. 197, 199; *Hoyt v. White*, 46 N. H. 45, 47; *Quidort v. Pergeaux*, 18 N. J. Eq. 472, 480; *Rider v. Hulse*, 33 Barb. 264, 270; *Syme v. Riddle*, 88 N. C. 463, 465; *Raybold v. Raybold*, 20 Penn. St. 308, 311); but they do usually expressly or by implication secure to the wife the natural increase of her property (*Stout v. Perry*, 70 Ind. 501, 504; and since such increase is hers, though largely the result of her husband's efforts (*Aldridge v. Muirhead*, 101 U. S. 397, 399, there seems to be no reason why her own services to it, though these belonged to her husband, should injuriously affect her rights. See *Mitchell v. Sawyer*, 21 Iowa 582, 583. When a married woman has, as above suggested, no powers by statute unconnected with her statutory separate property, her dealings with such property in the way of trade must be subject to limitations of the same character as those which control her trading with her equitable separate estate: see *O'Daily v. Morris*, 31 Ind. 111, 112; *Todd v. Lee*, 16 Wis. 480, 483. She cannot, for example, trade under such a statute on her personal credit: *Glover v. Alcott*, 11 Mich. 470, 480, 485; *Robinson v. Wallace*, 39 Penn. St. 133. Her power to manage her separate estate and her power to trade are quite distinct: *Wheeler v. Raymond*, 130 Mass. 247, 248; *Nash v. Mitchell*, 71 N. Y. 199, 203. A contract for furniture to be used in a boarding-house which is her separate property (*Tillman v. Shackleton*, 15 Mich. 447, 454; *Chapman v. Briggs*, 11 Allen 547), or for horses for her livery stable (*Manderback v. Mock*, 29 Penn. St. 43, 47), may be invalid as contracts of a trader, but valid as contracts with relation to her separate property.

Sect. 7. *Capacity under other Statutes*.—A statute securing to a married woman her earnings or the products of her skill and industry, by implication enables her to earn money and to trade (see *Haight v. McVeagh*, 69 Ill. 624, 628; *Adams v. Honness*, 62 Barb. 326, 336; *Krouskop v. Shontz*, 51 Wis. 204, 215; *Dayton v. Walsh*, 47 Id. 113, 120; *Bovard v. Kettering*, 5 Out. 181), just as statutes securing to married women property acquired by purchase enable them to purchase on credit (*Tiemeyer v. Turnquist*, 85 N. Y. 516, 521; 39 Am. Rep. 674); thus alone are such statutes given a reasonable meaning. A statute enabling married women to trade, unless it contains restricting provisions (see *Bradstreet v. Baer*, 41 Md. 19, 23), enables them to trade just as if they were sole (*Bodine v. Killen*, 53 N. Y. 93, 96)—to use any of the usual means of trade (*Guttman v. Scannell*, 7 Cal. 453, 459), and to engage in any

legitimate calling: *Haight v. McVeagh*, 69 Ill. 624, 628. In some states the statutes require married women traders to secure a special license, or file among the records a special declaration, or obtain a decree of court, before they can engage in trade (see *Adams v. Knowlton*, 22 Cal. 283; *Reading v. Mullen*, 31 Id. 104, 106; *Martinez v. Ward*, 19 Fla. 176; *Franklin*, 79 Ky. 497, 498; *Moran v. Moran*, 12 Bush 303; *Uhrig v. Horstman*, 8 Id. 172, 177; *Wheeler v. Raymond*, 130 Mass. 247, 248; *Snow v. Sheldon*, 126 Id. 332, 334; *Youngworth v. Jewell*, 15 Nev. 45, 47; *King v. Thompson*, 87 Penn. St. 365, 368; *Elsev v. McDaniel*, 95 Id. 472, 474; *Orrell v. Van Gorder*, 96 Id. 180, 181); but it seems that she cannot plead her failure to conform with such requirements, as they are simply for the benefit of the husband's creditors: *Porter v. Gamba*, 43 Cal. 105, 109. See *Youngworth v. Jewell*, 15 Nev. 45, 47. Since her personal incapacity to contract is the main cause of a married woman's inability to trade at common law, all statutes enabling her to contract indirectly enable her to trade.

II.—THE INCIDENTS OF MARRIED WOMEN'S CAPACITY TO TRADE.

Sect. 8. *Status, Rights and Liabilities of Married Women Traders, Generally.*—The status, rights and liabilities of married women traders, have been already to some extent discussed, and the importance, in this connection, of considering the source of a particular trader's capacity in any particular case must be apparent. Generally speaking, when a married woman can trade only by virtue of her ownership of equitable or statutory separate estate, she cannot trade on her personal credit or act as a *feme sole* (*O'Daily v. Morris*, 31 Ind. 111, 112; *Glover v. Alcott*, 11 Mich. 470, 485; *Robinson v. Wallace*, 39 Penn. St. 133; but can only deal with the property so that the profits will enure to her own benefit (*Mitchell v. Sawyer*, 21 Iowa 582, 583; *Carey v. Burruss*, 20 W. Va. 571, 579; and can only render it liable for her debts by charging it—contracting with reference to it, etc.—her contracts being valid against it, not because she is a trader, but because they are such as may be enforced in equity or under the property acts. See *Tillmun v. Shackleton*, 15 Mich. 447; *Chapman v. Briggs*, 11 Allen 547; *Manderbach v. Mock*, 29 Penn. St. 43, 47; *Todd v. Lee*, 16 Wis. 480, 483. So, when she trades simply as her husband's agent, though she binds him she does not bind herself personally: (see *Conklin v. Doull*, 67 Ill. 355, 357;

Tuttle v. Hoag, 46 Mo. 38, 41; she may have the profits if he chooses to let her keep them (see *Penn v. Whitehead*, 17 Gratt. 503, 512; but he and the business are liable for the debts contracted by her on its behalf: *Partridge v. Stocker*, 36 Vt. 108, 114. When, however, she may trade personally, by virtue of her husband's abandonment, etc., by custom or by statute, she can trade just as if unmarried: (*Abbey v. Deyo*, 44 Barb. 374, 381; unless, of course, the statute limits her capacity: *Young v. Gori*, 13 Abb. Pr. 13, 14. In such case, as will now be shown, she, for the purposes connected with her business, has the status of a *feme sole*, the fullest rights to the enjoyment of the profits of the business, and the fullest liabilities for its debts.

Sect. 9. *Express Powers of Married Women Traders.*—Most of the statutes as to married women traders expressly provide that they shall trade "as if *sole*," and under such statutes no special questions seem to have arisen. See *Berry v. Zeiss*, 32 U. C., C. P. 231, 239; *Porter v. Gamba*, 43 Cal. 105, 109; *Martinez v. Ward*, 19 Fla. 175, 187, 188; *Kingman v. Frank*, 33 Hun 471; *Williams v. Lord*, 75 Va. 390, 398, 399; *Krouskop v. Shontz*, 51 Wis. 204, 217; the main questions are as to the implied powers of married women traders, and are discussed below. In one case the naming of certain powers was held a denial of all other powers: *Bradstreet v. Baer*, 41 Md. 19, 23; *Cruzen v. McKaig*, 57 Id. 404, 462.

Sect. 10. *Implied Powers of Married Women Traders.*—Under statutes enabling a married woman to trade and not limiting her capacities, she may trade precisely as if unmarried; she is, as to her business, a *feme sole*, and may do all things incidental to trading in general, and all things usual and proper in the particular trade in which she is engaged: *Young v. Gori*, 13 Abb. Pr. 13, 14 note. See *Berry v. Zeiss*, 32 U. C., C. P. 231, 239; *Trieber v. Stover*, 30 Ark. 727, 730; *Camden v. Mullen*, 29 Cal. 564, 566; *Porter v. Gamba*, 43 Id. 105, 109; *Rockwell v. Clark*, 44 Conn. 534, 536; *Martinez v. Ward*, 19 Fla. 175, 187; *Nispel v. Laparle*, 74 Ill. 306, 308; *Wallace v. Rowley*, 91 Ind. 586, 589; *Tallman v. Jones*, 13 Kans. 438, 445; *Mitchell v. Sawyer*, 21 Iowa 582, 583; *Snow v. Sheldon*, 126 Mass. 332, 334; *Knowles v. Hull*, 99 Id. 562, 564; *Rankin v. West*, 25 Mich. 195, 201; *Allen v. Johnson*, 48 Miss. 413, 418; *Netterville v. Barber*, 52 Id. 168, 172; *Youngworth v. Jewell*, 15 Nev. 45, 47; *Wheaton*

v. *Phillips*, 12 N. J. Eq. 221, 223; *Barton v. Beer*, 35 Barb. 78, 80; *James v. Taylor*, 43 Id. 530, 531; *Abbey v. Deyo*, 44 Id. 397, 301; *Adams v. Honness*, 62 Id. 326, 336; *Wood v. Sanchez*, 3 Daly 197, 198; *Nash v. Mitchell*, 71 N. Y. 200, 203; *Frecking v. Rollanā*, 53 Id. 422, 425; *Bodine v. Killeen*, Id. 93, 96; *Baum v. Mullen*, 47 Id. 577, 579; *Sammis v. McLaughlin*, 35 Id. 647, 650; *Kingman v. Frank*, 33 Hun 471; *Morgan v. Perhamus*, 36 Ohio St. 517; *Silveus v. Porter*, 74 Penn. St. 448, 451; *Wilthaus v. Ludecus*, 5 Rich. 326, 329; *Newbiggin v. Pillans*, 2 Bay 162, 165; *Williams v. Lord*, 75 Va. 390, 398; *Krouskop v. Shontz*, 51 Wis. 214, 217; *Dayton v. Walsh*, 47 Id. 113, 120. The object of these statutes is not only to do justice to wives (*Youngworth v. Jewell*, 15 Nev. 45, 47), but also to encourage trade. See *McDaniel v. Cornwall*, 1 Hill (S. C.) 428, 429.

To illustrate: She may engage in any legitimate calling: *Guttman v. Scannell*, 7 Cal. 455, 459. She may conduct her business personally or by agent; she may have her manager (*Cooper v. Ham*, 49 Ind. 393, 416), her salesmen and clerks (*Guttman v. Scannell*, 7 Cal. 455, 459; *Abbey v. Deyo*, 44 Barb. 374, 381); she may be a partner, silent or active (*Parshall v. Fisher*, 43 Mich. 529, 534), as will be shown; and she may, unless this is prohibited by statute (see *Porter v. Gamba*, 43 Cal. 105, 109), have her husband as her agent (*Guttman v. Scannell*, 7 Cal. 455, 459; *Bellows v. Rosenthal*, 31 Ind. 116; *Rankin v. West*, 25 Mich. 195, 200; *Lockwood v. Cullin*, 4 Robt. 129, 136; though, as will be shown, whether she may be a partner with him is disputed. She need not unless the statute so provides (*Ex parte Franklin*, 79 Ky. 497, 498), have separate property to begin with (*Tallman v. Jones*, 13 Kans. 438, 445; *Dayton v. Walsh*, 47 Wis. 113, 120); she may start out on credit (*Young v. Gori*, 13 Abb. Pr. 13, 14, note), or use property given her by her husband (*Lockwood v. Cullin*, 4 Robt. 129, 136), though, in the latter case, his creditors may have rights. See *Penn v. Whitehead*, 12 Gratt. 74. The capital and stock in trade (*Lovell v. Newton*, L. R., 4 C. P. Div. 7, 12; *James v. Taylor*, 43 Barb. 530, 531,) of her business, as well as the profits (*Mitchell v. Sawyer*, 21 Iowa 582, 583; *Sammis v. McLaughlin*, 35 N. Y. 647, 650; *Silveus v. Porter*, 74 Penn. St. 448, 457; *Meyers v. Rahte*, 46 Wis. 655, 659; *Dayton v. Walsh*, 47 Id. 113, 110) are hers; and such property, though in the joint possession of herself and her husband, is in her

possession—the possession following the title: *Newbrick v. Dugan*, 61 Ala. 251, 253; 23 Am. Law Reg. (N. S.) 627. She may, on credit, purchase goods for her trade (*Nispel v. Laparle*, 74 Ill. 306, 308; *Frecking v. Rolland*, 53 N. Y. 422, 425), or buy land or seed for farming purposes (*Camden v. Mullen*, 29 Cal. 564, 566; *Chapman v. Foster*, 6 Allen 136, 138); or rent a store (*Knowles v. Hull*, 99 Mass. 562, 564); or contract for her services (*Adams v. Honness*, 62 Barb. 326, 336); or contract for working a quarry—for the laborers and mules (*Netterville v. Barber*, 52 Miss. 168, 172); she may, as if sole, transfer a note received by her in the course of trade (*Rockwell v. Clark*, 44 Conn. 534, 536); and she may even sell out her business, and agree not to use the same name again: *Morgan v. Perhamus*, 36 Ohio St. 517. She is personally liable on all contracts made by her in the course of her business (*Barton v. Beer*, 35 Barb. 78, 80. See *Trieber v. Stover*, 30 Ark. 727, 730; *Nispel v. Laparle*, 74 Ill. 306, 308), even as endorser of a note (*Wilthaus v. Ludecus*, 5 Rich. 326, 327); she is liable for the frauds, etc., of her employees (*Baum v. Mullen*, 47 N. Y. 577, 579), and is estopped, as if sole, from denying their right to represent her (*Bodine v. Killeen*, 53 N. Y. 93, 96); so, she is liable, as if sole, for goods consigned to her (*Newbeegin v. Pillans*, 2 Bay 162, 165); she may make a deed for the benefit of creditors (*Schumann v. Peddicord*, 50 Md. 560), and take the benefit of the insolvent or bankrupt laws. See *Ex parte Holland*, L. R., 9 Ch. Div. 307, 311; *In re Kinhead*, 3 Biss. 405, 410. But see, *Relief v. Schmidt*, 55 Md. 97. Whether she is in business is a question of fact (see *Jarman v. Wooloton*, 3 Term 618, 622; *Glover v. Alcott*, 11 Mich. 471, 479; *Abbey v. Deyo*, 44 N. Y. 343; *Partridge v. Stocker*, 36 Vt. 108, 113), though, if preliminaries are required, as the filing of a declaration, whether the requirements have been fulfilled is, of course, in part a question of law. So, whether a particular transaction was in the course of her business is a question of fact: *Camden v. Mullen*, 29 Cal. 564, 567. When she sues she must allege and prove that she was engaged in business, and that the right of action arose in the course thereof (*Smith v. New England*, 45 Conn. 415, 420), and when she is sued these facts must be alleged and proved by the plaintiff: *Baum v. Mullen*, 47 N. Y. 577, 579; *Wood v. Sanchey*, 3 Daly 197, 198; *Nash v. Mitchell*, 71 N. Y. 200, 203.

Sect. 11. *Married Women Traders as Partners.*—It has been said that a married woman trading in equity with her equitable separate property, may enter into partnership (*Penn v. Whitehead*, 17 Gratt. 503, 512); but this statement must be taken with limitations. For the normal contract of partnership is a personal contract involving a personal capacity (*Carey v. Burruss*, 20 W. Va. 571, 576; 43 Am. Rep. 790), which a married woman does not have in equity or under mere separate property acts. Accordingly, it is settled that statutes securing to married women their property with the rents, profits, increase, etc., do not enable them to enter into partnership: *Bradstreet v. Baer*, 41 Md. 19, 23; *Mayer v. Soyster*, 30 Id. 403; *Howard v. Stephens*, 52 Miss. 239, 244; *Bradford v. Johnson*, 44 Tex. 381, 383; *Carey v. Burruss*, 20 W. Va. 571, 576; 43 Am. Rep. 790. At common law, when a female partner married the partnership was dissolved (*Bassett v. Shepardson*, 52 Mich. 3; *Alexander v. Morgan*, 31 Ohio St. 546, 550); and now she cannot be a partner if she has no capacity to trade personally (see *Swasey v. Antram*, 24 Ohio St. 87, 95; *Carey v. Burruss*, 20 W. Va. 574, 575; 43 Am. Rep. 790), or if she is expressly prohibited by the statute enabling her to trade (see *Todd v. Clapp*, 118 Mass. 495, 496), or so far as she is thereby partially prohibited (see *Porter v. Gamba*, 43 Cal. 105, 109), as she is in some states. But as she has, under statutes giving her the capacity to trade generally, the personal capacity to trade as if sole and the power to pursue all the usual methods of trade, by the weight of authority, she may under such acts, trade in partnership (*Kinkead*, 3 Biss. 405, 410; *Camden v. Mullen*, 29 Cal. 564, 565; *Francis v. Diekel*, 68 Ga. 255, 258; *Preusser v. Henshaw*, 49 Iowa 41, 44; *Westphal v. Henney*, 49 Id. 542, 543; *Plumer v. Lord*, 5 Allen 460, 462; *Parshall v. Fisher*, 43 Mich. 529, 532, 534; *Newman v. Morris*, 52 Miss. 402, 406; *Zimmerman v. Erhard*, 58 How. Pr. 11, 13; 8 Daly 311; *Bitter v. Rathman*, 61 N. Y. 512, 513; *Scott v. Conway*, 58 Id. 619; *Graff v. Kennedy*, 31 Alb. L. J. 2; *Silveus v. Porter*, 74 Penn. St. 448, 449; *Krouskop v. Shontz*, 51 Wis. 204, 217; *Horneffer v. Duress*, 13 Id. 603, 605)—she may even be a secret partner: see *Parshall v. Fisher*, 43 Mich. 529, 534; *Scott v. Conway*, 58 N. Y. 619; *Bitter v. Rathman*, 61 Id. 512, 513. Still in a few cases and on different grounds this capacity to be a partner has been denied: *Haas v. Shaw*, 91 Ind. 384, 389, 396; *Montgomery v. Sprankle*, 31 Id. 113, 115; *Maghee v. Baker*,

15 Id. 254, 257; *Bradstreet v. Baer*, 41 Md. 19, 23; *Cruzen v. McKaig*, 57 Id. 454, 462; *Carey v. Burruss*, 20 W. Va. 571, 576; 43 Am. Rep. 790. So also as she is a *feme sole* in her trade, and may therein employ general or special agents, and may employ her husband as such there seems to be no reason why she should not be able, when she can be partner at all, to be the partner of her husband, and accordingly many cases hold (*In re Kinkead*, 3 Biss. 405, 410; *Francis v. Dickel*, 68 Ga. 255, 258; *Newman v. Morris*, 52 Miss. 402, 406; *Zimmerman v. Erhard*, 58 How. Pr. 11, 13; *Graff v. Kennedy*, 31 Alb. L. J. 2), while others assume (see *Camden v. Mullen*, 29 Cal. 554, 565; *Westphal v. Henney*, 69 Iowa 542, 543; *Parshall v. Fisher*, 43 Mich. 529, 532, 534; *Silveus v. Porter*, 74 Penn. St. 448, 449; *Krouskop v. Shontz*, 51 Wis. 204, 217; *Horneffer v. Duress*, 13 Id. 603, 604), that she can. But this has been strenuously denied, on the ground that even where a married woman may contract, she cannot, at law, without express authority, contract with her husband, and that the particular statute enables her to trade on her "separate" account: *Lord v. Parker*, 3 Allen 127, 129; *Edwards v. Stevens*, Id. 315; *Plumer v. Lord*, 5 Id. 460, 462; *Allen v. Johnson*, 48 Miss. 413, 419. See *Haas v. Shaw*, 91 Ind. 384, 389. To this it may be replied that if a wife may employ her husband as her agent, as all admit she can, it is not consistent to say that she cannot contract with him at all, and that the word "separate," in the statutes, refers to the wife's status; not to the manner in which she shall trade: *Zimmerman v. Erhard*, 58 How. Pr. 11, 13, 14.

In such cases as she cannot be a partner, and therefore could not be held liable as partner on a note not signed by her (*Carey v. Burruss*, 20 W. Va. 571, 582; 43 Am. Rep. 790; *Plumer v. Lord*, 7 Allen 481, 485), she may, nevertheless, be liable for her individual acts: *Cruzen v. McKaig*, 57 Md. 454, 462; and she does not in such cases lose her property put into the firm business: *Maghee v. Baker*, 15 Ind. 254, 257. So, even when she cannot join a firm of which her husband is a member (*Plumer v. Lord*, 7 Allen 481, 484), she may, after his retirement, go in, and on a new consideration become liable for pre-existing partnership debts: see *Preusser v. Henshaw*, 49 Iowa 41, 44. So, though she cannot be a partner, she may jointly lease and share the profits of joint property (*Allen v. Johnson*, 48 Miss. 413, 419), and be bound by her husband's acts as her agent with respect thereto: *Reiman v. Ham-*

ilton, 111 Mass. 245, 247. In a few cases, without speaking of husband and wife as partners, equity has decreed an apportionment of the profits of a business carried on by them jointly : see *Glidden v. Taylor*, 16 Ohio St. 509, 522; *Penn. v. Whitehead*, 17 Gratt. 503, 513.

Sect. 12. *Married Women as Corporators, Stockholders, &c.*—Very nearly the same questions arise in considering a married woman's capacity to be an incorporator as those which are involved in her right to be a partner : *Plummer v. Lord*, 5 Allen 460, 462. Corporators enter into a mutual and personal contract, which is concluded by the act of incorporation (*Taylor, Corporations*, sect. 31); and therefore without personal capacity to contract a married woman could not be an incorporator. But, as business is very commonly carried on by corporations, a married woman with a general capacity to trade would, it seems, have by implication the capacity to be an incorporator. The fact that the corporation laws provide that "any person" may be an incorporator, would not give such capacity to a married woman under disabilities, for such general laws apply only to persons *sui juris* : see rule discussed, *Md. Law Record*, March 1st 1884. But a married woman may be a stockholder, holding her stock as any other *chose in action* ; and it has been held that when her *choses in action* are her separate property she is liable as any other stockholder for assessments, &c. : *Anderson v. Line*, 14 Fed. Rep. 405, 406 ; *The Reciprocity Bank*, 22 N. Y. 9, 15.

It is of course difficult to state with certainty the law on so complicated a subject as that discussed in this article, and many of the points touched upon would bear much elaboration ; but we have endeavored simply to collect the cases relating to the trade of married women and to give in a few words the law as it appears therein.

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