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COMMENTS

LEGAL RIGHTS OF MARRIED WOMEN IN TEXAS

I. Introduction

All of the contractual powers of the wife in Texas are said to be derived from the acts of the legislature, while other powers, such as the ability to convey property and to engage in lawsuits, which are considered inherent in her right to own property, generally have been limited by acts of the legislature. An understanding of the relevant statutes and their development is therefore fundamental to any profitable study of the legal status of married women in Texas. Provisions in force today have come from every era of Texas history since statehood, and some have remained in force though partially inconsistent with later legislation. For these reasons, many cases seemingly in conflict can be reconciled by chronological placement in the statutory framework, and actual conflicts between other cases can be attributed to the uncorrelated condition of this legislation. This Comment will discuss the development, including the 1957 amendments, of the wife's rights to contract, convey, and engage in lawsuits.

II. History

Prior to 1913 the law empowered the husband with management of his separate property, of all the community property, and of the wife's separate property, subject to a limited power of the wife to contract for the benefit of her separate property and for necessaries. When the wife contracted outside these statutory limits the contract was voidable by her. As a further restriction the husband was required to join in the conveyance of her separate lands.

The first major addition to the property rights of married women

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2 Compare Dority v. Dority, 96 Tex. 215, 71 S.W. 950 (1903) with Bearden v. Knight, 149 Tex. 108, 228 S.W.2d 837 (1950).
3 See, e.g., cases cited note 53 infra. For the purposes of this Comment it is assumed that both husband and wife are living together and that both are legally competent. Discussion of the responsibility of either spouse for the torts of the other is outside the scope of this Comment.
in Texas occurred in the year 1913, when the wife was given the power of sole management, control, and disposition of her separate property, both real and personal, and of that portion of the community property made up of her personal earnings, rents from her separate lands, and the income from her separate securities. The husband retained control over his separate property and the remainder of the community. The statutory plan evidently envisioned two community partnerships with control centered in the person who, or whose property, produced the revenue. To secure the authority given each spouse to manage his separate property and his portion of the community, that property under his control was made exempt from debts created by the other spouse. The segment of community property placed under the wife's control has often been called her "special community," and that remaining under the dominion of the husband, the "general community." The act of 1913 restricted the wife only in requiring her husband's joinder in the transfer of her securities, in becoming a surety for another, and (as formerly) in conveying her separate realty. The former requirements that the husband must sue for recovery of the wife's separate property and that he must be joined in suits against her separate property were retained.

The 1913 legislation made no mention of any power of the wife to contract. In the act as originally passed, such power was provided for in what is now article 4623, which began: "The wife may make any contract which she would be authorized to make but for her marriage except those herein and elsewhere forbidden . . . ." This provision would have allowed her to contract as if she were a feme sole. Such an emancipation of the wife was objected to by the Governor, and to avoid his veto the bill was recalled by a joint resolution and the entire provision regarding contractual power was stricken. Article 4623 was thus left with only the provisions re-

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9 These descriptions were used by Bobbitt, Is There More Than One Class of Community Property in Texas? 4 Tex. L. Rev. 154 (1925).
13 Id. at 926.
Regarding the non-liability of the husband for her debts and requiring his joinder in surety contracts and so remained until January 1, 1958, when the joinder requirement was eliminated. The 1913 act did not amend what is today article 4626, providing for the removal of her disabilities for trading purposes; this article provides a procedure whereby she can obtain express powers to contract and is discussed infra.

In 1917 the legislature attempted to go one step further toward what resembled a modern modified common-law system by making the rents and revenue from separate land and the income from separate securities the separate property of each spouse. Personal earnings were not included in this change. This exclusion was probably intentional since even those community property states which hold revenue from separate property to be separate do not so hold with personal earnings. In compiling the 1925 revision, the 1913 provision expressly giving the wife power over the revenues of her separate property was omitted. It must have seemed superfluous, since the wife clearly had control over her separate property. But, the first part of the same sentence which gave the wife control over her personal earnings was also dropped, presumably through oversight. This omission left the statutes devoid of provisions granting her control over her personal earnings, as they have never been separate property. The provisions which exempted this revenue and her earnings from the debts of the husband were allowed to remain, however, and still do so today. What is today article 4623 also remained, and implies that revenues from separate property and her earnings are still subject to her debts.

The enlargement of the wife’s separate estate by the 1917 amendments was declared unconstitutional in Arnold v. Leonard as in conflict with the definition of the wife’s separate property in the Texas Constitution. It was recognized, however, that the legislature could freely amend her powers of control and disposition and could exempt her property from the debts of the husband without violating the Constitution. To conform to this decision the provision

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16 de Funiak, Principles of Community Property 163-65 (1943).
17 Huie, supra note 7, at XXXIX.
18 Id. at XXXX.
20 114 Tex. 535, 273 S.W. 799 (1925); Tex. Const. art. XVI, § 15.
declaring revenue from her separate property to be her separate property was removed, but the provisions of the 1913 act which placed it under the management and control of the wife were not re-enacted. Thus, no statutory authorization remained for her control over the revenues of her separate real estate and securities or her personal earnings. The only authorization for control remained in what is today article 4614, providing for her sole control over her separate property.

In 1957 the Legislative Council, backed by many women’s clubs, proposed amendments to article 4614 to provide for the wife as follows: she may “contract and be contracted with, sue and be sued, and her coverture shall not be a defense in any suit or action based on such contracts.” The old requirement that the husband must join in conveyances of her realty and transfers of her securities was also to be dropped. They further proposed deleting the old listings of article 4616 (which exempted from the husband’s debts rents from her separate realty and income from securities) in favor of the broader expression exempting “revenue from her separate property.” The proviso in article 4623 that the husband join in suretyship contracts was also to be deleted.

The proposed modifications to articles 4616 and 4623 were adopted as proposed, but the Senate amended the proposed article 4614 to make its benefits conditional on the wife’s being twenty-one years old and filing with the county clerk an acknowledged statement that she elected to accept the benefits of the act. Furthermore, the broad grant of power to contract in the proposed act was modified to allow her to make binding contracts “in connection” with her separate property. The act further provided that she might sue and be sued alone—evidently when in connection with her separate property—and might convey her lands and securities without the husband’s joinder.

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32 Texas Legislative Council, Report to the 55th Legislature on the Legal Status of Married Women in Texas, Suggested Act No. 2 (1956). Assistance was given the Council by Professors W. O. Huie, Gus Hodges, and Millard H. Rudd of the University of Texas Law School.
33 The Council’s suggested act No. 1 which did not pass in any form, would have dropped the wife’s separate acknowledgment requirement.
III. CONTRACTUAL POWERS

A. Generally

1. In Regard To Her Separate Property

After the deletion of the clause in the 1913 legislation allowing the wife sweeping powers to contract and after the mishaps of 1925 and 1929, there remained only the provision in article 4614, providing: "The wife shall have the sole management, control, and disposition of her separate property, both real and personal . . . ." The courts have recognized that to effectuate this power of control the wife must be allowed to make some contracts binding her separate property. Thus in Whitney Hardware Co. v. McMahan the breach of the wife's contract to make repairs on her separate buildings was held to make the wife liable to the tenant on the ground that the contract was a necessary incident to the management and use of her separate property. In Cauble v. Beaver-Electra Refining Co. the wife was held liable on a contract to purchase fuel oil for use in operating her separate drilling business. Levin v. Jeffers held a wife liable for breach of her agreement with a contractor who was to erect a building on her separate land. A wife has also been held liable on her note given to pay off an outstanding mortgage which was necessary to the preservation of her separate land. From a study of these and similar cases, what relationship may we conclude the contract need bear to the separate property in order for the wife

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26 As to the liability of her special community property for debts contracted in the management of her separate estate, see notes 60 and 79 infra and accompanying text. The separate property of the husband is expressly exempted from the debts of the wife for non-necessary items. Tex. Rev. Civ. Stat. arts. 4613, 4623 (1921). As the general community property is under the management of the husband and subject to his debts, Speer, op. cit. supra note 1, at § 347, it is generally exempted from the debts of the wife, Tex. Rev. Civ. Stat. arts. 4623, 4619 (1921). Shaw v. Finney, 7 S.W.2d 152 (Tex. Civ. App. 1928); Coats v. Bockstein, 176 S.W.2d 968 (Tex. Civ. App. 1945). Several cases, however, have held liable the wife's one-half interest in the community. Durian v. Curl, 155 Tex. 377, 286 S.W.2d 929 (1956); Cullum v. Lowe, 9 S.W.2d 70 (Tex. Civ. App. 1928), criticized in Comment, 7 Tex. L. Rev. 615 (1929). See also Foster v. Hackworth, 164 S.W.2d 796 (Tex. Civ. App. 1942). Judge Speer favors liability of the husband for the wife's debts not only for necessaries, but also on contracts to benefit her separate estate. His conclusion is based on article 1984 (requiring the husband to be joined in suits based on both such contracts) and the fact that the husband "receives the use, rents, profits and occupation of her property during marriage." Speer, op. cit. supra note 1, at § 182. Articles 4613 and 4623 are, however, contrary to such a conclusion, and article 4623 was passed subsequent to article 1984. In fact, article 1984 might have been held to be partially overruled by article 4623 and other amendments of 1913 but for Judge Speer's own opinion in Tannehill v. Tannehill, 171 S.W. 1050 (Tex. Civ. App. 1914). As to his second basis, it is certainly evident after the decision in Bearden v. Knight, 149 Tex. 108, 228 S.W.2d 817 (1950), that the husband does not receive the use of rents and revenues. See also note 44 infra.

22 Farm & Home Sav. & Loan Ass'n v. Abernathy, 129 Tex. 379, 102 S.W.2d 410 (1937).
to be bound? Many cases state, often in the form of dictum, that the wife can contract only to "benefit" her separate estate, a word first appearing in this context in pre-1913 legislation but dropped in that year. The word appears today only in article 1984, a procedural statute enacted in 1848, which specifies that the husband must be joined in suits against the wife on such contracts. The word "benefit" naturally implies gain or desirable result to her property from the contract, but actual benefit is no longer required; the test is whether the material was furnished to be used to improve her separate estate, not whether it was so used. The contract need not be reasonable and proper and may result in considerable loss to her. In many cases, if there was benefit at all, it flowed only to the community.

The leading cases previously mentioned have used the following phrases to describe the relation: "preserving her separate estate;" "necessary to their operation, management and control;" and "necessarily incidental to such control and management." Such statements have led to the suggestion that the contract must "concern" her separate property. No accurate generalization can be drawn as each case will depend on the particular contract and the type of property involved, but apparently the connection can be a tenuous one. The 1957 amendment to article 4614 providing that after filing her election the wife can contract "in connection" with her separate property is apparently a codification of this case law.

2. For Necessaries

The second type of transaction in which the wife can contract and bind herself, i.e., her separate property and her special community, is for necessities for herself and children. She is generally not liable for necessities for the husband. The source of this power is articles 2423, 2424, and early judicial development.

Necessaries

3 Taylor v. Hullingsworth, 142 Tex. 158, 176 S.W.2d 733 (1943); Lewis v. Daniels, 126 S.W.2d 794 (Tex. Civ. App. 1940) error dism.; see also cases collected in 21 Tex. Dig. Husband and Wife § 162 (1933).
34 Speer, op. cit. supra note 1, at § 179.
36 A separate line of cases has developed under the mercantile and trading statute which restricts the wife if her separate property consists of a business. See the section of this Comment dealing with article 4626, Section III, B., 2, infra.
37 Harris v. Williams, 44 Tex. 124 (1875); Speer, op. cit. supra note 1, at § 176.
38 Magee v. White, 23 Tex. 180 (1859); Humbles v. Hefley-Stedman Motor Co., 127 S.W.2d 515 (Tex. Civ. App. 1939), 18 Tex. L. Rev. 91 (1939). But, in Finney v. State, 308 S.W.2d 142 (Tex. Civ. App. 1957) error ref. n.r.e., article 3196a was held to have engrafted an exception on the general rule, and the wife was held liable for treatment received by her husband in a state hospital.
39 Hartley, Dig. of the Laws of Tex. 737 (1850). These today appear as Tex. Rev. Civ.
are those items essential for maintenance of the wife's and children's livelihood and vary according to the individual's normal standard of living. This type contract should not be confused with the contract in connection with her separate property for, unlike the latter type, the contract for necessaries binds the husband's separate property and the general community also.

3. Respecting Revenues From Separate Property

Revenue from the wife's property and her personal earnings were treated together in the 1913 act, which gave the wife complete control of both. Beginning with and following the 1917 legislation, which attempted to make the revenues part of the wife's separate estate, the law regarding these two types of property developed separately and, consequently, they will be discussed separately.

As noted earlier, the act of 1913 provided that "the personal earnings of the wife, the rents from the wife's real estate, the interest on bonds and notes belonging to her and dividends on stocks owned by her shall be under the control, management and disposition of the wife alone ..." Had this provision remained in the statutes it is quite probable that the power to contract regarding these revenues would have been implied as necessary to effectuate the wife's control over them as in the case of the provision giving her control over her separate property. The failure to include a similar provision when the statutes were adjusted to conform to Arnold v. Leonard, however, left serious doubts whether or not control was to continue in the wife. Judge Speer, writing in 1929, concluded that the omission returned control to the husband as in pre-1913 law. Professor Huie and other writers felt that the omission was inadvertent and that the courts should regard control as remaining in the wife.

40 Speer, op. cit. supra note 1, at § 178.
42 Note 15 supra and accompanying text.
44 Judge Speer drafted the 1913 legislation but after the express power to contract was removed in order to satisfy the governor, he felt that there was little left but the caption. Speer, op. cit. supra note 1, at § 168 n.16. After the provision giving the wife control of her special community property was omitted and the exemption statute allowed to remain, he concluded that the husband alone could "dispose" of this community property by voluntary conveyance, but neither party could subject it to involuntary conveyance, i.e., execution. Speer, op. cit. supra note 1, at §§ 347, 358.
for Professor Huie's view is found in other elements of the 1913 plan which were allowed to remain; e.g., article 4616, which still exempted these items from the husband's debts, and article 4623, which implied that the wife had control by stating that these items would be liable for her debts. Further support for Huie's view is found in the recent case of *Bearden v. Knight,* in which the Supreme Court held revenues from the wife's separate lands exempt from the husband's debts and stated that the only purpose of the 1929 legislation was to conform to *Arnold v. Leonard.* The Court further stated that the wife had the sole right to control and disposition of the revenue because it was necessary for her full enjoyment of her separate land. This reaffirmed the earlier view of the Court in *Goblman Lester & Co. v. Whittle,* which held the wife liable on her contract to sell cotton grown on her separate land.

The *Bearden* case left unsolved three major problems regarding the use of the wife's revenues raised by the omission of 1929. The 1957 legislation will probably solve only the first of them.

(1) Considerable trouble was encountered under the 1913 statute because the exemption section (which remains today as article 4616) listed only rents from realty and income from securities as exempt from the husband's debts. The question was raised whether or not this listing was exclusive or merely illustrative. If it were exclusive then she would have no effective control over other types of revenues from realty and income from personalty other than securities, since they could be bound by the acts of the husband. In interpreting "rents" to include other revenues from land, *Bearden* cleared up part of the problem. The 1957 revision to article 4616 evidently solved the remaining question of income from personalty by amending the statute to exempt "revenues from her separate property." (Emphasis added.) The exemption statutes do not expressly establish control of these items in the wife, but they do negative any effective

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40 149 Tex. 108, 228 S.W.2d 837 (1950).
41 Id. at 120, 228 S.W.2d at 843.
42 114 Tex. 148, 273 S.W. 808 (1925).
44 The following types of the wife's income have been held subject to the husband's debts: revenue from the wife's separate copyright, *Simmons v. Sykes,* 56 S.W.2d 193 (Tex. Civ. App. 1932) error dism.; income from her separate business, *Hardee v. Vincent,* 136 Tex. 99, 147 S.W.2d 1072 (1941); cotton grown on separate land, *First Nat'l Bank v. Davis,* 5 S.W.2d 753 (Tex. Comm. App. 1928). The *Davis* case was expressly overruled in *Bearden v. Knight,* 149 Tex. 108, 228 S.W.2d 837 (1950).
control by the husband since he cannot offer them to his creditors as security.

(2) The further problem is presented as to whether property purchased with these revenues is exempt since the 1913 act and subsequent legislation were silent on the question. The legislature may have thought tracing would be applied here as in other areas of the law thus making further legislation unnecessary.\(^{53}\) No single rule can be drawn from the cases. In Hawkins v. Britton State Bank,\(^{53}\) farming equipment purchased with rents from the wife's separate land was held to be under the control of the wife and exempt from the husband's debts on the ground that the equipment was necessary for complete control and enjoyment of her separate land. Later, however, in Strickland v. Wester,\(^{54}\) the Court held that personal earnings converted into realty were subject to his debts. Strickland did not purport to overrule Hawkins but cited it favorably in the opinion.\(^{55}\) Distinction is possible on three theories. (a) Strickland may be limited to cases where the wife converts her personal earnings.\(^{56}\) This element will be discussed in more detail under the subsequent section dealing with personal earnings. (b) Strickland may mean that whenever lands are purchased, whether with revenues or earnings, they are not exempt and thus are under the control of the husband. This is in line with Texas cases which seem to recognize only one type of community property when lands are being conveyed.\(^{57}\) No logical distinction between land and personalty is apparent, however. (c) The Strickland and Hawkins cases may mean that when any type of income is converted, the purchased property, in order to be exempt, must be essential to the control and use of the wife's separate property.\(^{58}\) Thus, the purchase of lands would not usually be necessary to the effective use of her separate property, as would such items as farming equipment. However, a court of civil appeals recently held in Mercantile National Bank v. Wilson\(^{59}\) that bonds purchased with the income from a wife's separate trust were exempt from the husband's debts in spite of urgings that the Strick-

\(^{53}\) Love v. Robertson, 7 Tex. 6 (1851); Huie, supra note 7, at IX; Emery, Mutations, 4 Sw. L.J. 123 (1950).


\(^{55}\) 131 Tex. 23, 112 S.W.2d 1047 (1939).

\(^{56}\) Id. at 21, 122 S.W.2d at 1048.

\(^{57}\) Huie, supra note 45, at 616; Comment, 4 Sw. L.J. 88, 94 (1950); 34 Tex. L. Rev. 477 (1956).

\(^{58}\) See note 164 infra and accompanying text.

\(^{59}\) Huie, supra note 45, at 616; Huie, supra note 7, at 41.
land case required a different result since purchase of these bonds was not essential to the management of her separate property, viz., the trust. If this case is followed it would seem to negative the rule that the item purchased must be necessary to the use of her separate property and limit the Strickland holding to instances where she either buys any type of property with her personal earnings or uses any type of income to buy land.

(3) Since the revenues of the wife's separate property and many of the items purchased therewith are beyond effective control of the husband because they are not liable for his debts, it is logical to inquire as to the scope of the wife's control. This depends primarily on the extent of her power to contract regarding such property.

It will be recalled that the wife can contract where necessary to the preservation and control of her separate property and in such a case this property (unless otherwise exempt) would be subject to execution to satisfy a judgment. Evidently, on such a contract the revenues of the property are also bound although there is little authority expressly so holding. In Womack v. Womack the Court stated that where a judgment was entered on such a contract the court would order execution first on the income and if this is insufficient, then on the corpus. Article 4623 seems to be directed at this question, stating: "Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife. . . ." (Emphasis added.) In the Bearden case the Court stated that a correct interpretation of article 4623 was that it subjected rents and revenues to liability on her "valid contracts." A contract necessary to the preservation and control of her separate estate is such a "valid" contract.

Recent cases generally have taken a liberal view of what contracts are necessary to the effective control over her separate estate. It is clear that a contract for the disposition of the revenues from separate property (at least from separate land) is enforceable against the wife as necessary to her control. Thus, she can turn crops and other

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60 8 Tex. 397 (1812); Gohlman, Lester & Co. v. Whittle, 254 S.W. 595 (Tex. Civ. App. 1923), rev'd, 114 Tex. 548, 273 S.W. 808 (1925) (both courts sustaining foreclosure on cotton grown on separate property). See also Haynes v. Stovall, 23 Tex. 625 (1859).
61 149 Tex. at 120, 228 S.W.2d at 844.
62 Note 26 supra and accompanying text.
63 Note 35 supra and accompanying text. But cf. cases cited note 117 infra.
64 Bearden v. Knight, 149 Tex. 108, 228 S.W.2d 837 (1950); Gohlman, Lester & Co. v. Whittle, 114 Tex. 548, 273 S.W. 808 (1925); Speer, op cit. supra note 1, at § 199.
such revenue into cash by valid contract. Logically, a contract to trade crops for assets other than cash would be equally valid. If she acquires cash she can purchase any variety of items in an executed cash transaction. The question arises in the credit purchase—an executory contract.

Such a contract can be (1) connected with the control of her separate estate, (2) related to the betterment and preservation of her special community estate, or (3) not connected with either. The first situation seems to fall within the language of the Bearden case and the contract should be binding. Discussion of the second transaction assumes that she has acquired assets (unconnected with her separate estate) with special community funds in a cash transaction or by electing to perform under a voidable contract. The Strickland case indicates that if land is purchased with special community funds, the wife cannot make a binding contract in connection therewith as the husband has control. On the other hand, the Wilson case indicates that at least personal property (in that case bonds) is beyond the husband's control and logically must be under the wife's control. This case opens up a new dimension to the wife and, if carried to its logical conclusion, could restore the powers the wife had under the control provisions in the act of 1913. Concerning the third situation, statements in cases and in legal periodicals that the wife has "sole control and disposition of revenues" could be taken to mean that she can make a valid contract of any kind so long as there is an understanding that revenue alone will be looked to to satisfy the contract. This would seem to admit a general contractual power in the wife; however, the many cases which hold that she can contract only in connection with her separate property clearly negative such an idea. The word "disposition" is probably used in such context to refer only to executed transactions, i.e., sales and

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86 Bearden v. Knight, 149 Tex. 120, 228 S.W.2d 844 (1950). See also Hawkins v. Britton State Bank, 122 Tex. 69, 12 S.W.2d 243 (1912).

87 Even the 1913 acts did not provide for her control over items purchased with special community funds, although it is probable that such control was intended. See note 168 infra and accompanying text.

88 Bearden v. Knight, 149 Tex. 108, 120, 228 S.W.2d 837, 843-44 (1950); Comment, 4 Sw. L. J. 88, 95 (1950); Comment, 25 Tex. L. Rev. 657, 660 (1947).

89 John F. Grant Lumber Co. v. Jones, 139 Tex. 647, 164 S.W.2d 1019 (1942); Whitney Hardware Co. v. McManus, 111 Tex. 242, 231 S.W. 694 (1921); Red River Nat'l Bank v. Ferguson, 109 Tex. 287, 206 S.W. 923 (1918).
conveyances, and the word “control” used to mean all powers other than the right to contract.\textsuperscript{70}

Because of this uncertainty as to the wife’s power to bind revenues from separate property, she is, as a practical matter, unable to invest her revenue in a credit transaction unless she reinvests it in the further development of the separate estate. Even if she accumulates revenues to purchase assets in a cash transaction she may find herself, under the rule of the \textit{Strickland} case, unable to control such assets and may even lose them to the husband’s creditors. The result is that the wife is encouraged to squander her funds rather than to invest them wisely if she wishes to ensure that such revenue will be free from the husband’s creditors.

4. \textit{Respecting Personal Earnings}

As noted earlier,\textsuperscript{71} statutory authority for the wife’s control over her personal earnings disappeared in 1925 when the attempt to convert revenues to separate property failed. Since control over personal earnings usually is not related or necessary to the management and use of the wife’s separate property (although she could use them to benefit this estate), it is more difficult to establish a basis for this control than for her control over revenues from her separate property. If any statutory authority remains, it is in article 4616, which continues to exempt personal earnings from the husband’s debts, and article 4623 which purports to make them liable for her debts (without stating what kind).

In \textit{Pottorf v. J. D. Adams Co.}\textsuperscript{72} a court of civil appeals observed that the provision for her control of earnings was no longer in the statute and held that a contract of a married woman in regard to her personal earnings was void. As it is now established that married women’s contracts are only voidable at their option, the case is based on an erroneous premise, and Professor Huie feels that it offers little authority.\textsuperscript{73}

The decisive setback for women’s rights to control their earnings came in \textit{Strickland v. Wester}\textsuperscript{74} where, as will be recalled, the Court held that a creditor of the husband could reach personal earnings of the wife when they had been invested in land. Her management powers were not discussed but such a limitation on the exemption statute (article 4616) negatives any effectual control or use of her

\textsuperscript{70} These powers are listed in Kultgen, supra note 45, at 338.

\textsuperscript{71} Note 18 supra and accompanying text.

\textsuperscript{72} 70 S.W.2d 745 (Tex. Civ. App. 1934) error ref.

\textsuperscript{73} Leake v. Saunders, 126 Tex. 69, 84 S.W.2d 993 (1935); Huie, supra note 7, at XL.

\textsuperscript{74} 131 Tex. 23, 112 S.W.2d 1047 (1938).
earnings. The Court’s only statement was that its conclusion had been reached after “careful consideration;” thus, it is not known if the omission in the 1925 revision was regarded as crucial as it was in Pottorf. The Hawkins case was not expressly overruled and, as previously mentioned, reconciliation is possible either on the basis of the different source from which the property came (revenue or earnings), the type of property purchased, or on the relationship of the property purchased to her separate property. The Strickland case is generally thought to mean at least that she has no power to control and contract with regard to her personal earnings and that they are subject to the husband’s debts when converted.

Professor Huie feels that the reasoning in Bearden v. Knight is contra to that in Pottorf and will lead to the overruling of the latter and that Strickland should be overruled. The writer feels that both cases should at least be limited to their fact situations. In both, the wife was dealing with the husband to the potential detriment of third-party creditors of the husband. Overruling or sharply limiting these cases would be in accord with the 1913 plan to give the wife control over income produced by her property or her efforts. Vestiges of this plan are still in the statutes and diversions from it came through legislative errors committed while trying to increase the wife’s rights rather than decrease them. The wife’s earnings would be bound on a contract for necessaries, and it is possible that her earnings are bound when she contracts in connection with her separate property but no such holding has been found. This conclusion is based upon reading the provision of article 4623, providing that earnings and revenues are subject to her debts, as meaning they are liable for authorized debts, viz., contracts in connection with her separate property. If this is correct, then, contrary to popular belief, she does have a limited control of earnings.

The practical effect of the cases, however, is that a merchant extending credit to a wife for a non-necessary item (assuming the 1957 amendments make no change) and relying on her future personal earnings for payment should require the husband’s joinder as a party to the contract. His signature will bind not only the general

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78 Id. at 25, 112 S.W.2d at 1048.
79 Note 56 supra and accompanying text.
80 Kultgen, supra note 45, at 344; Comment, 4 Sw. L.J. 88, 98 (1950).
81 Huie, supra note 45, at 637.
82 All property of the husband and wife is liable in such cases. See notes 37, 41 supra.
83 In Bearden v. Knight, 149 Tex. 108, 228 S.W.2d 837 (1950), the Court stated that such property was liable on her “valid contracts.” This interpretation of article 4623 gives it some meaning without necessitating the conclusion that it makes her special community liable for all debts—which could turn it into a general emancipation statute.
community and his separate property but under the Strickland case will also enable the creditor to reach the wife's earnings which have been converted into other assets. It is not certain whose signature will authorize levy against her personal earnings still in the form of cash.\textsuperscript{81} Article 4616 states that they are not liable for the husband's debts, and the cases negative the wife's control and thus her ability to bind them, with a possible exception when she is contracting in connection with her separate estate.

The practice of requiring the husband's joinder in a contract seeking to bind the wife's personal earnings may be one of the sources of the misconception that the husband's joinder increases the contractual power of the wife.\textsuperscript{82} Opinions have been expressed that when both parties sign, her earnings are bound — thus imposing an area of joint control in the Texas law. No case has been found, however, holding that with his signature she can be bound on a contract otherwise unauthorized (the suretyship contract being a statutory exception requiring joinder). Where the wife is authorized to contract, the rights are vested in her alone, and when her husband joins her his property is bound, but she is liable only if it is a type contract she is authorized to make in her own right.\textsuperscript{83} The true effect of the husband's signature is only that it binds his separate property, the general community, and, under the Strickland case, certain property bought with special community funds. If his signature enlarged the areas of contract open to the wife, then a system of joint control would be in effect although no Texas statute has ever expressed the purpose of creating an area of joint control in the law, and such a system would be cumbersome and undesirable.\textsuperscript{84}

The only statute readable as implying joint control is article 4621: "The community property of the husband and wife shall not be liable for debts . . . resulting from contracts of the wife except for necessaries . . . unless the husband joins in the execution of the contract." (Emphasis added.) This wording could be interpreted to mean that the wife's earnings and revenues as part of the community property can be bound in any case when the husband joins, but there has been no such holding.\textsuperscript{85} Article 4621 in this form was passed in 1917 as a component of the legislation which attempted to convert

\footnotesize{\textsuperscript{81}Comment, 4 Sw. L.J. 88, 98 (1950).\textsuperscript{82}Comment, 4 Sw. L.J. 208, 216 (1950).\textsuperscript{83}Speer, op. cit. supra note 1, at § 173; id. at 216.\textsuperscript{84}Kultgen, supra note 45, at 350.\textsuperscript{85}Durian v. Curl, 155 Tex. 377, 286 S.W.2d 929 (1956), held one half the general community liable on a contract of the wife. This type case has been criticized in Comment, 7 Texas L. Rev. 615 (1929).}
revenues from her separate property into separate property. Judge Speer makes the impressive argument that the phrase was merely the ambiguous result of an attempt to make abundantly clear that what then remained of the general community property could be bound only by the husband's act, whether by himself or together with his wife. Subsection (b) of article 4614, as amended in 1957, provides that when the wife files her election she may then "in her own name contract and be contracted with, sue and be sued without the joinder of her husband . . . ." (Emphasis added.) The joinder phrase evidently refers only to her right to sue and be sued, which has required his joinder since 1840, and should not be taken to mean that if she does not file, his joinder in contracts will be required.

Pottorf is the only case directly limiting the wife's use of her earnings, but Strickland has had the same practical effect. The unfortunate result of the statutory omission and the subsequent cases is not only that the wife is restricted in the use of funds which have come to her—frequently by much greater personal effort than did her separate property and its revenues—but also that a serious question is presented whether anyone can contract to use these funds.

5. As A Surety

Prior to the 1957 amendments, article 4623 provided:

Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract.

In the 1957 amendments the last sentence regarding suretyship was dropped from the article. The effect of the omission, of course, depends on the effect of the provision before it was omitted, i.e., whether it granted the wife an original power to make any type suretyship contract when the husband joined, or only limited her already

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87 Speer, op. cit. supra note 1, at § 169.
88 Acts of 1846, 2 Gammel, Laws of Texas 1669 (1898); Acts of 1840, 2 Gammel, Laws of Texas 177, § 9 (1898).
89 Inability of the wife to control her earnings could cause difficulty when she goes into business. See note 112 infra and accompanying text.
91 The statute only restricts the wife when she puts herself in the position of a surety; thus, she could transfer a note, but she would not be liable on her endorsement. Fruits v. Kimbell Mill Co., 247 S.W. 615 (Tex. Civ. App. 1925); Speer, op. cit. supra note 1, at § 187.
existing powers (to contract for necessaries and to manage her separate estate) by requiring the husband's joinder when the contract happened to be of this type.

When originally passed as part of the sweeping revision of 1913, the provision which is now article 4623 began: "The wife may make any contract which she would be authorized to make but for her marriage except those herein and elsewhere forbidden . . . ." This was followed by the provision set out above regarding non-liability of the husband and the prohibition on suretyship. To avoid a veto by the governor, the bill was recalled and the first sentence granting the wife unlimited power was stricken, leaving the act without an express grant of contractual power. The provision regarding suretyship contracts was thus originally intended as a limitation on the preceding extension of her power, but there now remained nothing to limit.

In Red River National Bank v. Ferguson and Lee v. Hall Music Co., the Supreme Court by dictum stated that article 4623 was an original grant of power for a wife to become surety for another when she was joined by her husband. Judge Speer, writing in 1929, felt that in spite of this dictum the proviso limited only what power she already had, and that, therefore, with or without the proviso she could make suretyship contracts only where she could make any other contract, viz., for necessaries and in connection with her separate property. Support for this view is found in Wilson v. Dearborn, where a court of civil appeals held that the wife could not be a surety on a bond even with the husband's consent unless it was for necessaries or for her separate property. But in Cockrell v. State, the court of criminal appeals adopted the view that it was a grant of original power and held that the wife could become a surety for another's bail bond. Such action would not ordinarily be within her power to contract for necessaries or for her separate property. In the recent case of Tolbert v. Standard Accident Ins. Co., the Supreme Court stated that article 4623, which granted the power to the wife to become a surety, should be interpreted narrowly and

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Note 14 supra and accompanying text.
Speer, op. cit. supra note 1, at § 183.
119 Tex. 547, 33 S.W.2d 685 (1931); Comment, 4 Sw. L.J. 107, 109 (1930).
Speer, op. cit. supra note 1 at § 183; accord, 23 Tex. Jur., Husband and Wife § 175 (1932).
88 Tex. Crim. Rep. 121, 228 S.W. 1097 (1921). This interpretation was assumed to be the rule in Coleman v. State, 116 Tex. Crim. Rep. 46, 28 S.W.2d 144 (1930).
148 Tex. 235, 223 S.W.2d 617 (1949).
therefore did not authorize the wife to become an indemnitor. The facts seem to indicate that the contract was neither for necessaries nor for her separate property and thus, according to Speer's view, she could not have bound herself with or without the husband's joinder either as an indemnitor or a surety.

If the courts continue to reason that article 4623 granted to the wife an original power, then the 1957 amendment omitting this phrase logically must be held to have relieved her of the right ever to become a surety. Under the better view of Judge Speer and the Wilson case, however, the omission only removes the requirement of joinder of the husband, and the wife can make surety contracts in any situation in which she has power to make any other contract. Situations calling upon the wife to become a surety in order to preserve her separate estate or purchase necessaries would probably be rare, but the need for such power could arise, and she should not lose any potential advantage by such an absolute prohibition.

It should be noticed that the removal of the requirement of the husband's joinder in the 1957 act is unconditional and is not dependent upon her filing an election under article 4614. Sections 199 and 200 of the Probate Code,100 allowing her to make bond when acting as an executrix, administratrix, or guardian, evidently envisioned her as the principal and not as a surety, and these sections of the code should be considered a limited extension of her power to contract.

B. After Removal of Disabilities Under Article 4626

1. Scope of Article 4626

In 1911, when the power of the wife to contract was negligible, the act which is today article 4626 was passed to enable the wife to engage in business affairs.101 It facilitated her trading by ensuring creditors that she would not be allowed to plead her coverture and disaffirm her contracts. The statute does not express the breadth of the contractual power granted her, stating only that the "... said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with..." Two questions arise: (1) Did article 4626 intend to limit permissible contracts to those for mercantile or trading purposes and thus limit the wife to certain fields of business? (2) Were her contractual powers (and

101 Tex. Gen. Laws 1911, c. 52, p. 92, 15 Gammel, Laws of Texas 92 (1911). For details of the procedure for complying with the act, see Comment, 4 Sw. L.J. 199 (1910). The full text of article 4626 is set out in the Appendix, infra.
resulting control) extended to the income from her separate business?

In answer to the first question, Judge Speer felt that contracts authorized by the statute should be limited to those made for mercantile and trading purposes. The only direct holding indicating the type contract authorized and the nature of the business in which she can engage under article 4626 is George v. Dupignac\(^{103}\) where a court of civil appeals held that she could make "any kind of a contract" and was not limited to mercantile or trading agreements. The contract involved was for the purchase of a cow and there was no evidence that the cow was necessary to the management or preservation of her separate property. Under this holding the statute would allow even a non-trader to make an unavoidable contract for an original acquisition not connected with her separate estate, a power otherwise unauthorized. Other cases have implied that non-traders such as a woman dentist,\(^{104}\) a beauty college operator,\(^{105}\) and a restaurant owner\(^{106}\) would have been able to contract had they complied with article 4626. A fair conclusion is that the courts favor a broad interpretation placing little or no limitation on the type of contract executed or business engaged in.\(^{107}\)

In seeking to answer the second question, it is significant that article 4626 states that after removal of the wife's disabilities "all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts . . ." (Emphasis added.) This clearly implies that items belonging to the special community—and this would include income from her business—would not be liable under article 4626. The subsequent 1913 act, which was applicable to all wives, must be looked to to bind her special community property. Thus, the cases of Hawkins and Strickland are probably useful guides in determining her ability to control and exempt these items from the husband's debts. This evidently means that when she makes a contract not connected with her separate estate, a judgment can be taken but will reach only her sepa-

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\(^{102}\) Speer, op. cit. supra, at § 290.
\(^{103}\) 273 S.W. 914 (Tex. Civ. App. 1925) error ref.
\(^{104}\) Jameson v. Williams, 67 S.W.2d 228 (Tex. Comm. App. 1934); cases cited note 69 supra and accompanying text.
\(^{107}\) Express Publishing Co. v. Levenson, 292 S.W.2d 337 (Tex. Civ. App. 1956) error disp. 19 Id. at 206; Strickland v. Wester, 131 Tex. 23, 112 S.W.2d 1047 (1938); Hawkins v. Britton State Bank, 122 Tex. 69, 52 S.W.2d 243 (1932). See also section III, 3., (3) of this Comment.
rate property, for under this theory she can subject special community assets to execution only by contracting in connection with her separate estate. However, *George v. Dupignac* may have extended article 4626 to make liable her special community in other cases also. In that case a court of civil appeals stated that after removal of disabilities "she has the right to make any kind of a contract and she will be bound on any contract that she may thereafter make, the same as though she were a feme sole." There was no indication in the case as to what funds the creditor was seeking to reach, but in view of the broad statement of the court, it is possible that the case means that her special community will be bound on a contract which is not connected with her separate property. Such a contract is clearly not binding on her if she does not comply with the statute. If this broad statement is followed, then article 4626 does give her additional powers to contract with her special community property. The case is weak authority, however, in the face of the implied limitation in article 4626, and it is probable that the wife who has complied with article 4626, cannot bind this special community except where she can do so without complying with the statute, *i.e.*, when contracting in connection with her separate property.

Under the *Hawkins* case the revenues of her business are exempt from the husband's debts after being reinvested in the business, but the *Strickland* case raises serious questions as to that part of the income attributable to her personal efforts. In certain businesses, *e.g.*, interior decorating or the practice of law, almost all the income would fall into the latter category, and serious problems can arise from this inability of the wife to control all her business income and make it exempt from the husband's debts. The enterprise of the wife, like most businesses, is likely to start from a small investment of her separate property and grow through the reinvestment of her profits. If the reinvested profits are not exempted entirely from the husband's debts, she can give only partial security to her original creditors who relied on the growth of the business for payment. (Of course, in most cases her business contracts would be connected with her separate property, thus subjecting revenues and unconverted earnings to liability.) Neither can the wife plan to continue as the sole manager, since the husband will eventually become a

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110 273 S.W. at 936.
111 Revenue from business has not always been exempted from the husband's debts. See *e.g.*, *Walker-Smith Co. v. Coker*, 176 S.W.2d 1002 (Tex. Civ. App. 1943) error ref. w.o.m., but under *Bearden v. Knight*, 149 Tex. 108, 228 S.W.2d 837 (1950), and the 1957 change in article 4616, this should at last be clear.
partner with her.\textsuperscript{118} This points up the collateral problem which the\textit{Strickland} case has raised, \textit{i.e.}, determining what income is capital revenue and what is attributable to personal efforts of the wife. This question has long plagued other community property states which regard revenues from separate property as separate and personal earnings as community.\textsuperscript{113} \textit{Arnold v. Leonard} is often commended for preventing this question from arising in Texas,\textsuperscript{116} but apparently it has now arrived in another form.

It frequently happens that a wife who wants to go into business has no separate property and uses either general or special community funds as beginning capital. In these circumstances she can, under present statutes, offer the potential creditor no security. Her compliance with article 4626 can make only her separate property liable on her contracts and article 4614 (both before and after the 1957 amendments) makes liable her special community only if she is contracting in connection with her separate property. The writer believes that the general willingness of creditors today to deal with a wife who has complied with article 4626 is based on an understanding, erroneous under a literal interpretation of the statute, that her separate property \textit{and} all the income and assets of the business are subject to forced sale in case of failure to perform her contract. Possibly the liberal approach of \textit{George v. Dupignac} will lead the courts to reach such a result.

Pending such a holding, to permit article 4626 thoroughly to perform its function, the following assets should be made subject to the wife's business contracts by clear legislation to that effect:

(1) All of the wife's separate property, revenue therefrom, and items purchased with such revenue, whether or not used in the business.

\textsuperscript{118} Comment, 4 Sw. L.J. 198, 206 (1950). Judge Speer concludes that though the wife complies with article 4626 it is as a practical matter impossible for her to operate her business because of the community nature of the profits. Speer, op. cit. supra note 1, at § 291. To remain independent of the husband she must "buy for cash or in such a manner as not to involve her husband's credit. ... She must not mingle with her own, goods purchased in any way upon her husband's credit, nor with the profits from her own investment; these are not hers." Speer, op. cit. supra note 1, at § 291. However, the Hawkins case, decided three years after Speer's 1929 edition, would evidently give her control over revenues reinvested. It is possible that the husband could be regarded as making a continuing gift to the wife (the income thus becoming her separate property) as in Cauble v. Beaver-Electra Ref. Co., 115 Tex. 1, 274 S.W. 120 (1925), but Judge Speer regards this as speculative, Speer op. cit. supra note 1, at § 297. The continuing gift theory is probably only a fiction designed to give stability to the business dealings of the wife, which could best be done by statutory amendment.

\textsuperscript{113} George v. Ransom, 15 Cal. 322 (1860); 3 Vernier, American Family Laws § 178, at 210 (1935).

\textsuperscript{114} Huie, The Texas Constitutional Definition of the Wife's Separate Property, 35 Texas L. Rev. 1014, 1059 (1957); Bobbitt, supra note 9.
(2) Assets belonging to the general community which are used in the business with the husband's consent. Under this plan the wife could offer these assets as security to creditors without their being converted to separate property, which would require a gift absolute from the husband to the wife. By thus enabling the wife to make temporary use of community property the basic purpose of the act could better be achieved and, at the same time, the community need not permanently divest itself of needed assets.

(3) Personal earnings of the wife from any source and items purchased therewith.

(4) All income from the business and items purchased therewith, whether attributable to special community assets or general community assets on loan to the business, or to the reinvestment of either of them in the business.115

2. Relation of Article 4626 Powers to Her Right to Contract to Manage And Use Her Separate Estate.

It will be recalled that case law, beginning in the 1920's, cured the omission of the 1913 statutes by granting to the wife that contractual power deemed essential to the management and use of her separate property.116 This body of authority would seem to have foreclosed the issue that a wife can make any contract for the preservation, repair, or even development of her separate estate, realty or personalty. A line of cases has developed, however, interpreting article 4626 to be the exclusive method whereby a woman operating a business can acquire any power to contract.117 Under this theory, contracts otherwise enforceable because in connection with the wife's separate property have been declared voidable because made for a mercantile purpose. This view can be traced back to dictum in Red River National Bank v. Ferguson118 (decided in 1918) which observed that the 1913 legislation had omitted any express provision granting the wife power to contract. In 1919 a court of civil appeals in Dickinson v. Griffith Lumber Co.119 relied on this dictum and concluded (erroneously as it later developed) that the wife was no better off contractually than in 1911 and that the article 4626 procedure was the only way for her to acquire power to contract.120 The

115 Reform has also been advocated in a Note, 34 Texas L. Rev. 1094, 1096 (1956).
116 Whitney Hardware Co. v. McMahan, 111 Tex. 242, 231 S.W. 694 (1921); See note 26 supra and accompanying text.
117 Cases collected in Note, 34 Texas L. Rev. 1094 (1956).
118 109 Tex. 287, 206 S.W. 923 (1918); Bobbitt, Contractual Powers of Married Women in Texas, 1 Texas L. Rev. 281, 289 (1923).
120 The courts did read the power to contract into the provision of article 4614, pro-
Supreme Court made a similar statement in 1936 in *Hirshfield & Co. v. Evans*, holding a wife not liable on a contract to replace a stock of merchandise in her separate store. The Court stated that since the legislature had set out the way in which a wife could contract for mercantile and trading purposes, the rule of implied exclusion obtained. The line of cases represented by *Cauble v. Beaver-Electra Refining Co.* was not mentioned. *Dickinson* and *Hirschfield* are still followed by the courts of civil appeals, and no realistic attempt has yet been made to distinguish *Cauble*. Where a distinction was attempted, the courts have stated the rule of *Cauble* and then drawn distinctions on the facts. Thus, a lease of office space in which to house a wife’s equipment for the practice of dentistry and a purchase of advertising space to attract students to a wife’s beauty college were held not necessary to the management or use of the wives’ separate property. Most of the contracts formerly held necessary for management and use of a wife’s separate estate involved land and not a business, and it has been suggested that a contract connected with separate land will be valid as not within the mercantile and trading prohibition. Such a distinction still leaves *Cauble* unexplained, since in that case the wife was operating drilling rigs. In a more recent case, *Bucek v. Yarborough*, a court of civil appeals decided that a wife cannot contract to purchase a building to be placed on her separate land when there has been no compliance with article 4626. The case would seem to be in direct conflict with *Levin v. Jeffers*.

It appears that the courts have come to regard the wife’s management and use of her separate property as a more or less passive function, limited to maintenance and upkeep as distinguished from a dynamic function of promoting growth, which is characteristic of a profit-making enterprise. The language and the holding in the *Cauble* case, if realistically analyzed, defy such limitation. Even if the *Cauble* case be completely discounted, the *Dickinson* line of cases places an unwarranted restriction on a wife who is attempting mere

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121 127 Tex. 254, 93 S.W.2d 148 (1936).
122 111 Tex. 1, 274 S.W. 120 (1925); Levin v. Jeffers, 122 Tex. 83, 52 S.W.2d 81 (1932); Lewis v. Daniels, 126 S.W.2d 794 (Tex. Civ. App. 1939) error dism.
126 Note, 34 Texas L. Rev. 1094, 1095 (1956).
128 122 Tex. 83, 52 S.W.2d 81 (1932).
ly to manage her separate property wisely. Potential creditors cannot risk dealing with her because of the possibility that their agreement might be considered a trading contract and therefore voidable by her. The *Dickinson* type cases are thus rapidly undoing what was done for the wife by the act of 1913 as interpreted by such leading cases as *Cauble, McMahan*, and *Levin v. Jeffers*.

The solution lies in recognizing that the statutory grant in the act of 1913 to manage her separate estate, both real and personal, is a broad grant to the wife of power to exercise the customary incidents of ownership and management, including the development and operation of her property for maximum return. This right should not be limited by an earlier statute (1911) which was designed for an era which passed into history forty-five years ago with the enactment of the 1913 amendments.\(^\text{100}\)

**C. After the 1957 Amendments**

The impact of the new act on the wife's rights to convey, engage in lawsuits, and become a surety is discussed in the sections dealing with those topics and the reader is referred to the appropriate sections. The full text of the amendments is set out in the appendix.

1. *In Regard To Her Separate Property*

The provision of article 4614(b) providing that she can contract "in connection" with her separate property appears to be only a codification of the case law built up under old article 4614 which provided for her sole control and disposition of her separate property.\(^\text{100}\)

The benefits of article 4614 as amended, however, are made conditional upon the wife's being twenty-one years of age and filing a statement with the county clerk indicating that she wishes to receive the benefits of the act.\(^\text{102}\) The introduction of this filing and age requirement into article 4614 has posed an important problem of interpretation because the new article 4614 completely replaces the old provision which will no longer appear in the statutes. Former article 4614 provided unconditional statutory authority for the wife's control of her separate property, from which all her powers of contract were derived (except those for necessaries).\(^\text{108}\) Since the wife's powers to contract are said to be statutory, the repeal of old article 4614 by amendment could be interpreted to mean that the

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\(^{100}\) See notes 4 and 101 supra and accompanying texts.

\(^{102}\) Note 36 supra and accompanying text.


\(^{104}\) See text accompanying note 25 supra.
wife no longer has control over her separate property unless and until she files her election and that the wife under twenty one has no control and can obtain none.

The act proposed by the Legislative Council did not contain any age limits or filing requirements. This form was objectionable to the sponsor of the amendments as it would “let a fourteen year old girl marry and the next day throw away her inheritance.” Under article 4625 (which makes a female minor legally of age upon her marriage) and old article 4614, she had been able to do this since 1913 if the property were not realty or securities (which require the husband’s joinder). Nevertheless, upon this justification the amendment was added requiring her to be twenty-one years of age and to file her election with the county clerk as a condition to receiving the benefits of the new article 4614.

These views, expressed by the sponsor of the amendments on the Senate floor, indicate that in his mind, at least, passage of the amendments would allow adult wives to make binding contracts only after filing and would allow minor wives no contractual powers under any circumstances. If new article 4614 does destroy the wife’s former powers, the requirement that the adult wife file before re-acquiring those powers is troublesome for her but not too onerous; if creditors who are aware of the changes insist on her filing, she can comply through a relatively simple and inexpensive procedure. The burden would fall upon creditors unaware of the new act who have become accustomed to dealing with her under her power to contract in regard to the management of her separate estate, as she would, under this construction of the new act, be able to plead her coverture and avoid the contract.

The act, under this interpretation, would be much more troublesome for a wife under twenty one. Since there would be no procedure by which she could file and obtain the power available under 1959.

133 Suggested Act No. 2, printed in Legal Status of Married Women in Texas, a Report to the 55th Legislature by the Texas Legislative Council (1956). This proposed act did not limit her to contracts “in connection” with her separate estate and was supported by many women’s clubs.
134 Statements by Senator Wardlow Lane, Chairman of the State Affairs Committee, as printed in the Dallas Morning News, “Senate Passes Bill Allowing Women to Control Estates,” April 17, 1957. Apparently the organized women in Texas regard further attempts to gain equal rights by amendments to existing statutes as “impractical” and will seek to have the Texas Constitution amended to provide that equality under the law shall not be denied because of sex. Legal Discriminations Against Women in Texas, prepared by the Texas Federation of Business and Professional Women’s Clubs, Inc. (1958).
135 Acts of 1848, 3 Gammel, Laws of Texas 77 (1898).
136 The wife may be put to some expense in securing legal advice since the act does not specify the form to be used in filing. The act is also silent as to the necessity of the husband’s joiner and as to the procedure and legal effect when the wife wishes to revoke her election.
article 4614, her only remedy would be to resort to article 4626, the mercantile and trading statute which is a cumbersome and expensive procedure, involving a petition and hearing in the district court. Thus, the minor wife with a limited amount of separate property ordinarily would be unable to make the contracts necessary for its management and preservation. Her husband could do no better in the management of her property unless he has sufficient assets of his own which can be reached by creditors since her separate property is clearly exempt from his debts.\textsuperscript{137} Obviously, the legislature could not have intended such an impasse in the control of property to occur,\textsuperscript{138} and thus it undoubtedly intended article 4614 only to provide a method whereby limited additional powers could be obtained but not to retract previously existing powers.\textsuperscript{139} In the case of the minor wife, it evidently seemed advisable that these additional powers be unavailable to her.

Two other features of the bill contain impressive evidence that she was to retain those powers of contract granted in the acts of 1913 without filing under the new act.

(1). Subsection (c) of 4614 as amended in 1957 undertakes to set out what the result will be if the wife does not file her election under subsection (d). The husband will be required to join in her conveyances of realty and transfers of securities — the same limitations found in old article 4614 copied verbatim. Subsection (d) goes on to say that if she files her election then the limitations in subsection (c) will no longer apply. Thus the legislature expressly set out the restrictions on the wife who does not file her election, and the only realistic conclusion is that they intended these to be the only limitations resulting from a failure to file. The fact that they are the same qualifications imposed upon her by the old law is further evidence of an intention that the other powers of the non-filing wife were to be unchanged by the new amendments. To interpret the act as extinguishing the contractual rights of the non-filing wife is to ignore the plain implications of subsection (c) and would return the wife to her 1911 status.\textsuperscript{140}


\textsuperscript{138} Possibly, guardianship was envisioned. Under Tex. Probate Code Ann. § 109 (1916), this might give control to her parents which could effectively protect her property but would certainly not protect her marriage.

\textsuperscript{139} This conclusion was shared by Mrs. Hermine D. Tobolowsky, Legal Advisor for the Texas Federation of Business and Professional Women's Clubs, Inc., in a letter to the Southwestern Law Journal, September 26, 1958. Mrs. Tobolowsky was present and participated in the Senate hearings on the bill. See note 134 supra.

\textsuperscript{140} The requirement of the wife having to \textit{do} something to receive powers would assure
(2). The broadening of the exemption statutes (articles 4616 and 4623) which are applicable whether or not she files her election, is in accord with the view that her prior powers are not diminished. These statutes were modified to make clear that personal earnings and revenue from all separate property would be exempt from debts of the husband.\textsuperscript{144} If the amended article 4614 were interpreted as returning control of the non-filing wife’s property to the husband, then an outright contradiction must be attributed to the legislature, for by expanding the exemption statute they effectively prevent his control.

When the adult wife does file, her power of control is not substantially increased because her contracts must still be connected with her separate estate,\textsuperscript{148} but her independence from the husband is established by the other provisions which eliminate the requirement of his joinder in conveyances and in suits.\textsuperscript{148}

2. \textit{In Regard To Her Personal Earnings And Revenues From Separate Property}

No substantial increase in her ability to bind her earnings and revenues should come from the use of the new words “in connection” with her separate property, for this appears to be only a codification of her former judicially given rights. It is doubtful that any increase will come from the rest of the new act.

The only possible source would be article 4614(b) which provides: “The community property of the husband and wife, with the exception of the wife’s personal earnings and the revenue from her separate property, shall never be subject to the payment of debts contracted by the wife . . . .” This phrase could be read to mean that these items are to be liable for any debt, thus eliminating the requirement that her contracts be connected with her property. However, this same clause has been in article 4623 since 1913\textsuperscript{144} without attracting any attention as a possible source for complete contractual power over these items. The true meaning of the phrase evidently is that these items will be liable only for her authorized debts.\textsuperscript{148} If any increase of contractual power is found in this provision it would result in equal benefit to those who have not filed,

\textsuperscript{148}See text accompanying note 36 supra.
\textsuperscript{144}Sections IV and V of this Comment infra.
\textsuperscript{144}See note 24 supra and accompanying text.
\textsuperscript{144}See text accompanying note 61 supra.
since the same provision is still found in article 4623 which does not contain any filing prerequisite.

3. For Necessaries

The 1957 amendments apparently make no change in the wife's right to contract for necessaries.

4. In Relation to Powers Acquired Under Article 4626 (Mercantile & Trading Statute)

The proposal submitted by the Legislative Council would have specifically repealed article 4626, but as passed the act contains only a general repealing clause; therefore, article 4626, since it is not in conflict with the amendment, is not repealed. Under article 4626 the wife is thought to have greater powers because she is not limited to contracts in connection with her separate estate. But, even under article 4626 it is probable that she can bind her special community only if the contract is in connection with her separate property.

No conflict would arise between the two statutes if it were not for the cases interpreting article 4626 to be the exclusive method for a business woman to acquire the power to contract. If the courts continue to hold article 4626 exclusive, then the ability to contract made available by article 4614 will be rendered ineffective as a practical matter. It is difficult enough for a creditor to determine when a wife is contracting “in connection” with her separate estate without requiring him also to predict at his peril what contracts will fall within or without the “mercantile and trading” classification.

This line of cases, holding article 4626 to be the exclusive source of contractual power for a business woman, began due to a lack of express statutory authority for the wife to contract (Dickinson v. Griffith Lumber Co.) and the grant of contractual power in article 4614 by the 1957 amendments should be sufficient ground for finding these cases inapplicable when the wife has complied with article 4614. If, as discussed previously, the new article 4614 were to be interpreted as relieving the wife of the powers granted in 1913 by setting up filing as a prerequisite to any control over her property, then as to wives who do not file, the statement in Red River National Bank v. Ferguson, relied on as the basic premise in the Dickinson case, would be correct and the Dickinson holding should be
followed. If such an unlikely interpretation were adopted, then as regards non-filing wives Texas will have returned to pre-1913 law.

IV. POWERS OF CONVEYANCE AND TRANSFER

A. Conveyance Of Land

This topic will be discussed under the following headings: (1) the wife's ability to convey land which is her separate property; (2) the wife's ability to convey land purchased with special community funds; (3) her ability to convey land of types (1) and (2) after removal of her disabilities under article 4626; and (4) the effects of the 1957 Amendments on her ability to convey land.

1. Conveyance Of Her Separate Lands

Restriction on the wife's power to convey separate lands was imposed in 1897 by what is now article 1299: "The husband and wife shall join in the conveyance of real estate, the separate property of the wife . . . ." The act of 1913 which gave her "sole management, control and disposition of her separate property" continued to require his joinder for such conveyances. The requirement is rigidly enforced. Thus, where the husband does not join in the conveyance of her separate realty the deed is not void as to strangers but, evidently, it is completely void as to the wife and her privies on the theory that the requirement is intended to benefit her by assuring that she will seek the husband's advice and counsel. Conversely, to free her as much as possible from domination by the husband, her separate acknowledgement is required to be taken "privily and apart." As it is a conveyance of her property, the wife must appear in the deed as a grantor and her signature alone will not pass title. If the husband has abandoned her or is insane, she can convey without the husband's joinder after application to the court under article 4617.

The law does not undertake to describe the purposes for

182 Tex. Gen. Laws 1913, c. 32, p. 61, 16 Gammel, Laws of Texas 61 (1913). Except as restricted by statute she can convey as if she were a feme sole, i.e., personal property other than stocks and bonds. Speer, op. cit. supra note 1, at § 249.
183 Buvens v. Brown, 118 Tex. 151, 18 S.W.2d 1057 (1929).
186 Stone v. Sledge, 87 Tex. 49, 26 S.W. 1068 (1894).
which she may convey, and in this respect her right of disposition seems to be unlimited.\(^{158}\)

2. **Conveyance Of Lands Purchased With Special Community Funds**

The act of 1913 provided that rents from the wife's real estate and income from her securities should be "under the control, management and disposition of the wife alone, subject to the provisions of article 4621 . . ."\(^{159}\) What was then article 4621 contained the following restrictions, which until the 1957 amendments continued to appear in article 4614: " . . . provided however, the joinder of the husband in the manner now provided by law for conveyance of the separate real estate of the wife [evidently referring to article 1299] shall be necessary to the incumbrance or conveyance by the wife of her lands . . ." Reading article 4621 and the provision giving her control and disposition together, it is probable that the original intent was to give the wife power to dispose of lands purchased with her special community funds. The emphasized words in the above-quoted portion of article 4621 demonstrate that the legislature was aware of article 1299, which required the husband's joinder in conveyances of her separate property and attempted to express an intention that all "her lands" be treated in like manner. Even though this was evidently the original intent, the writer has found no case which recognizes that lands could become special community property and be treated differently than the general community which may be conveyed by the husband alone, unless it is homestead.\(^{160}\)

As the provision for her control and disposition of revenues and personal earnings disappeared, her power to convey lands purchased with such funds apparently disappeared also.\(^{161}\) This result would also follow from the Strickland case,\(^{162}\) which held lands purchased with personal earnings liable for debts of the husband, since liability for his debts is certainly inconsistent with power of control and disposition in the wife. This inability to convey and control lands purchased with special community assets can conflict with her ability to bind revenues and earnings when she contracts in connection with her separate estate (discussed under her ability to contract regarding such funds). According to the Hawkins case,\(^{163}\) a contract suffi-
ciently connected with her separate estate will give the wife control over the thing purchased (in that case, farming equipment). However, if the wife used special community funds to purchase land on which to run cattle which were her separate property, the Strickland rule would allow this land to be conveyed away by the husband's deed as ordinary community. The inability of the wife to control and convey community land is demonstrated by the cases dealing with conveyances which recognize only one type of community property, *viz.*, general community which is subject to control and sale by the husband. This policy of lumping all community property into one category (possibly even though such lands are necessary to the preservation of the wife's separate property) is so firmly established by case law that it will probably require clear and unequivocal legislation for its reversal.

3. Her Power To Convey After Compliance With Article 4626

Article 4626 contained no statement implying a change from provisions of the older article 1299 (requiring the husband's joinder in conveyances) although it did purport to increase her independent ability to contract. It is generally thought that his joinder is still required in her conveyances although she has had her disabilities removed for trading purposes.


Article 4614(c) as amended in 1957 states that if the wife is under twenty one or fails to file her election with the county clerk, the joinder of the husband in conveyances and encumbrances of her lands is required as in prior years. When she does file her election (and she must be over twenty one to do so) subsection (d) states that this limitation shall not thereafter apply. Subsection (d) in conjunction with the general repealing clause of the 1957 amendments should qualify article 1299 so as to make it inapplicable after she has filed her election. Thus, she is now permitted to convey her separate lands without the husband's joinder. The new act does not purport to eliminate the husband's joinder if the separate property

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154 Bell v. Crabb, 244 S.W. 371 (Tex. Comm. App. 1922); Griffin v. Troup Independent School Dist., 163 S.W.2d 412 (Tex. Civ. App. 1942) error ref; Delay v. Truitt, 182 S.W. 732 (Tex. Civ. App. 1916) error ref.; Speer, op. cit. supra note 1, at § 247. Although the wife alone is unable to convey community lands, it has been held that the deed is valid if the husband expressly or impliedly gives his consent. Lockhart v. Garner, —Tex.— 298 S.W.2d 108 (1957); Thomas v. Chance, 11 Tex. 634 (1854). Thus, there are less formalities than in the case of her separate property.

155 Comment, 4 Sw. L.J. 199, 204 (1950).
is homestead; neither does it alter her inability to dispose of special community lands, as it did not contain any provision recognizing that lands could become special community.

B. Transfer Of Stocks And Bonds

Prior to 1913 the wife was considered able to make a sole transfer of personalty, but the act of that year required the husband’s joinder in transfers of stocks and bonds, apparently regardless of whether they were her separate property or purchased with special community assets. Elsewhere the act gave the wife control over her special community and it may be inferred that the act intended to extend this joinder requirement to items purchased with special community funds in view of the following language of article 4621: “... the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.” (Emphasis added.)

The repeal of the provisions for the wife’s control of her special community property in 1925 would seemingly relieve her of control over items purchased with such property, but a portion of her control was restored by the Hawkins case, at least when the item purchased is connected with her separate property. However, in Mercantile National Bank v. Wilson, bonds purchased with special community funds were held to be exempt from the husband’s debts although purchase of the bonds was not found necessary to the preservation of her separate estate. Thus, the Wilson case adds strong support to the view that property bought with special community funds takes on the character of the funds invested and therefore is subject at least to some control by the wife. Logically, such property should also be subject to disposition by the wife, for if the husband cannot subject the property to involuntary transfer it is difficult to imagine that he could make a voluntary transfer. The Strickland case as it now stands evidently prevents application of the Wilson rule to realty.

Under the 1957 amendments to article 4614, in subsection (c), the husband’s joinder is still required in transfers of stocks and bonds when the wife does not file her election. If she does file, then under article 4614 (d), subsection (c) is no longer applicable, and the hus-

167 Speer, op. ct. supra note 1, at § 224.
band's joinder no longer required. The question then is, does the joinder requirement in subsection (c) refer only to stocks and bonds which are her separate property or also to such special community property? Subsection (c) is identical with old article 4621, and having already concluded that this article, aided by the Wilson case, extended disposition by the wife to special community stocks and bonds when joined by the husband, then when the wife files (making subsection (c) inapplicable), her powers of disposition remain, but the husband's joinder is eliminated as to both classes of property.

Assuming the interpretation given the Wilson and Strickland cases is correct, the following is a brief summary of what and how the wife can convey.

1. Land which is the wife's separate property—The wife is the proper grantor but the husband must join unless she complies with the filing requirement of article 4614.
2. Land purchased with special community funds—Such land is a part of the general community and the husband is the proper grantor, but the wife can convey with the husband's consent.
3. Stocks and bonds (both separate and special community)—The wife can transfer but the joinder of the husband is required unless she complies with article 4614.

V. THE WIFE AS A PARTY LITIGANT

In the middle nineteenth century, when the husband had general control over all the property of both spouses, separate and community, three procedural provisions were passed requiring the husband's presence as a party in any lawsuit involving the marital property. They remain in the law today and are set out below.

A. The Wife As A Defendant

1. Her Separate Property

   Article 1985, passed in 1846, provides: "The husband shall be joined in suits for separate debts and demands against the wife but no personal judgment shall be rendered against the husband." In 1848 a more specific provision, article 1984, was passed but did not repeal article 1985. It provided: "The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for expenses which may have been incurred by the wife for the benefit of her separate property." Fail-

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172 Acts of 1848, 3 Gammel, Laws of Texas 77 (1898).
lure to join him when required by either statute will result in a voidable judgment unless he has abandoned her or is incapacitated. A pro forma joinder will be sufficient, however. The wife is a necessary party to any action seeking to reach her separate property and she would not be bound if the husband were sued alone.

As the husband is the primary obligor on contracts for necessaries furnished the wife and children, his separate property and the general community are liable, and the requirement of his joinder is logical since, as a practical matter, the creditor would join him anyway. As he is not liable on her other contracts, the requirement of his joinder is supported only by the argument that he will provide advice and counsel. It would seem, however, that if he were disposed to give advice he would offer as much voluntarily as he would when joined pro forma. The 1913 legislation was based on the assumption that the wife was competent to manage her separate estate and the continuation of the ancient idea of her incompetency and the necessity of his joinder in litigation seems inconsistent. The suggestion has frequently been made that the joinder requirements be repealed.

2. The General Community

In suits which seek to reach the general community, the husband is a necessary party defendant, and judgment against the wife alone on a debt of the community is voidable. It has been held that the wife is an improper party if the contract sued upon is not for necessaries or in connection with the wife's separate property as the judgment would wrongfully jeopardize her separate property. If the general community property is homestead (and that plea would

174 Lee v. Hall Music Co., 119 Tex. 547, 332, 35 S.W.2d 683, 687 (1931); Speer, op. cit. supra note 1, at § 323.
175 Nash v. George, 6 Tex. 214 (1851); Booth v. Cotton, 13 Tex. 359 (1855); Comment, 29 Texas L. Rev. 233, 242 (1950).
177 Note 41 supra and accompanying text.
178 Judge Speer concluded in Tannehill v. Tannehill, 171 S.W. 1050 (Tex. Civ. App. 1914), that the 1913 legislation did not repeal the earlier joinder statutes.
179 Kultgen, supra note 45 at 361; Comment, 29 Texas L. Rev. 233, 242 (1950). Repeal was also proposed in suggested act No. 2 submitted by the legislative council (except as to contracts for necessaries). See note 133 supra.
180 Nichols v. Oliver, 64 Tex. 647 (1885); Ohmart v. Highbarger, 43 S.W.2d 975 (Tex. Civ. App. 1931) error ref.; Speer, op. cit. supra note 1, at § 524.
182 Walling v. Hannig, 73 Tex. 180, 11 S.W. 547 (1889); Shelby v. Perrin, 18 Tex. 515 (1857); Comment, 29 Texas L. Rev. 233, 242 (1950).
be a good defense), the wife must be joined or the judgment does not bind her.\textsuperscript{182} Similarly, she is a proper party in other situations, e.g., when suit is against the husband’s executors or in trespass to try title.\textsuperscript{184}

3. Wife’s Special Community

No serious problem should be posed as to who are the necessary and proper party defendants when the plaintiff desires to levy on special community assets. The writer has found no case drawing a clear distinction between special and general community property, but different treatment is logically required, since article 4616 exempts the special community from the husband’s debts.\textsuperscript{185} The property can hardly be exempt from his debts if it is subject to levy under judgments against him alone, and we may fairly conclude that the wife is a necessary party as in the case of her separate property. Of course, the Strickland case engrafts on article 4616 an exception in the case of income converted to land and/or personal earnings converted into property. With regard to the necessity of joining the husband in suits seeking to reach special community assets, articles 1984 and 1985,\textsuperscript{186} although passed prior to the creation of the special community in 1913, seem to require the husband’s joinder (at least \textit{pro forma}) in the only types of suits which can reach such property, viz., suits on contracts for necessaries, contracts made in connection with her separate property, and actions for her torts.\textsuperscript{187} Judgment so rendered, but the statute mentions only her separate

4. Article 4626

A wife who has complied with article 4626 and has been declared a feme sole for mercantile and trading purposes may sue and be sued alone.\textsuperscript{188} The cases do not indicate the extent of her liability on a

\textsuperscript{182} Speer, op. cit. supra note 1, at § 122; 23 Tex. Jur., Husband and Wife § 287 (1932).
\textsuperscript{186} Acts of 1848, 3 Gammel, Laws of Texas 77 (1898); Acts of 1846, 2 Gammel, Laws of Texas 1669 (1898). The husband has a one-half property interest in such case which would be an added reason to require him to be joined.
\textsuperscript{187} A judgment on a pre-marital contract of the wife would undoubtedly reach special community property since in such a case even the general community is liable. Crim v. Austin, 6 S.W.2d 348 (Tex. Comm. App. 1928). Joiner of the husband seemingly would be required in this case also because it comes within the broad catch-all phrase “separate debts and demands” of Tex. Rev. Civ. Stat. art. 1985 (1925). Of course, a judgment could be entered against a married woman on other grounds if she failed to plead her coverture, but the words in article 1985 appear to be all inclusive and if the husband were not joined, the judgment would be voidable. Cases cited note 173 supra.
\textsuperscript{188} Tex. Rev. Civ. Stat. art. 4626 (1925); Comment, supra note 101.
property as liable. If the statute is interpreted literally, the only way to acquire a judgment over her plea of coverture which would reach special community property would be to allege a contract for necessaries or in connection with her separate property, in which case article 1984 requires joining the husband.

5. 1957 Amendments

Article 4614 as amended in 1957, in speaking of the separate property of the wife who has filed her election, provides "... and in connection therewith, she may, in her own name, contract and be contracted with, sue and be sued, without the joinder of her husband and her coverture shall not be a defense in any suit or action based on such contracts." (Emphasis added.) Undoubtedly, the term "such contracts" includes contracts for the benefit of her separate estate, and if she files her election, article 1984 is rendered pro tanto ineffective, and the husband need no longer be joined. If the contract is one for necessaries, article 4614 does not purport to make any change, and the husband must be joined under article 1984, a reasonable requirement since he is the primary obligor. Apparently, a suit against the wife alone when she has filed her election would reach special community as well as separate property. Such an interpretation would be desirable, for if this part of the act is to be of any practical value in eliminating the necessity for the husband's joinder, the judgment against the wife alone must authorize levy against as much property as when the husband is joined, viz., special community as well as separate property.

B. The Wife As A Plaintiff

1. Her Separate Property

Limitation was placed on the wife's ability to sue for recovery of her separate property by article 1983 in 1840, providing: "The husband may sue either alone or jointly with his wife for the recovery of the separate property of the wife; and in case he fails or neglects so to do, she may sue alone by authority of the court." If she files her election, article 4614 of the 1957 amendments provides that her separate property is subject to levy and execution, but the following sentence clearly implies that her special community is liable also.

188 See text accompanying note 31 supra.
189 Section (b) of article 4614, Tex. Gen. & Spec. Laws 1957, c. 407, p. 1234, states that her separate property is subject to levy and execution, but the following sentence clearly implies that her special community is liable also.
190 Acts of 1840, 2 Gammel, Laws of Texas 177, § 9 (1898).
he refuses to sue, abandons her, is unable to sue, or if she complies with article 4626 and has her disabilities removed, she may sue alone.\textsuperscript{103} Otherwise, the husband is a necessary party, but it is now clear that the wife in suing to recover her separate property need join the husband only \textit{pro forma}.\textsuperscript{104}

2. \textit{The General Community}

Although there is no statutory rule, the courts generally have regarded the husband as the only proper party to sue to recover the community property, and the wife as neither a necessary nor proper party.\textsuperscript{105} It has been held, however, that his joinder \textit{pro forma} tolls the statute of limitation.\textsuperscript{106} In any event, his failure to sue does not authorize her to proceed \textit{alone} unless he has abandoned her, is incompetent, or has conflicting interests.\textsuperscript{107}

3. \textit{The Wife's Special Community}

There seems to be no authority recognizing a possible distinction based on injury to her special community property. As in the cases where the wife was the defendant, the decisions have spoken of only one community; if the husband did not desire to sue, his decision was final, subject to the exceptions stated above.

4. \textit{The 1957 Amendments}

The 1957 amendments to article 4614 make it clear that when the wife files her election she can sue without the husband's joinder “in connection” with her separate property.\textsuperscript{108} Logically, this power should extend to contracts concerning the production of revenue from the separate property, the disposition of such revenue, and the purchase of property necessary to the management and control of her separate estate, for her ability to sue and make the final decisions in the conduct of such suits is an essential ingredient in the complete control of her separate property.

\textsuperscript{103} Norton v. Davis, 83 Tex. 32, 18 S.W. 430 (1892); Crenshaw v. Newell, 147 S.W.2d 523 (Tex. Civ. App. 1941) error ref.; Speer, op. cit. supra note 1, at § 510.
\textsuperscript{104} Van v. Webb, 147 Tex. 299, 215 S.W.2d 151 (1948).
\textsuperscript{106} Pacific Greyhound Lines v. Tuck, supra note 195.
\textsuperscript{107} Ezell v. Dodson, 60 Tex. 331 (1883); Comment, 29 Texas L. Rev. 233, 239 (1950).
\textsuperscript{108} Tex. Gen. & Spec. Laws 1957, c. 407, p. 1234 (Art. 4614(b)).
VI. Conclusion

The accomplishments of the 1957 legislation can be classified under three headings: (1) elimination of the necessity of the husband's joinder in the wife's conveyances, surety contracts, and suits; (2) codification of the wife's existent contractual powers; and (3) streamlining of the statutes exempting her property from the debts of the husband.

The second and third categories of achievement are significant because they make it easier to ascertain and apply the legal rules pertaining to the wife's powers. The first category is the most significant because it effects basic changes in the substantive law in this field and, as discussed later, lays a foundation for possible future substantive changes. Of course, the requirement that the wife file her election before receiving most of the benefits of the new act prevents blanket extension of these benefits to all married women, but it hardly can be said to prevent their acquisition by any adult wife with a moderate interest in receiving them. On the other hand, the regrettable statutory hiatus regarding the status of the non-filing wife may represent a negative accomplishment; at least, this will be the result in the absence of astute judicial construction or corrective legislation.\(^{199}\)

As stated earlier, the writer believes that the first category lays the predicate for future substantive changes. Allowing the wife on her own initiative to acquire full powers to convey and engage in litigation (as distinguished from the procedure in article 4626 requiring the husband's joinder and a determination by a district court that it is to her advantage) is an implied admission that the wife is competent to handle the most serious of her affairs. This admission, together with the previous judicial and legislative determination that the wife is competent to transfer personality and make contracts when such action is essential to the management of her separate property or to the well being of herself and her children, logically leads to the conclusion that the wife should be permitted to make binding contracts of other types also, viz., those necessary to the control of her earnings and revenues. This conclusion seems valid unless there is present in the latter type contracts and absent from the former some element requiring that the protective shield of disability be retained. No such element is apparent to the writer, who therefore believes that the 1957 legislation is the forerunner of more liber-

\(^{199}\) See text accompanying note 132 supra.
al statutes charting a return to the twin partnership plan of 1913.\textsuperscript{200}

If such enactments are forthcoming it is to be hoped that all existing relics of the nineteenth century will be discarded in favor of a comprehensive and detailed revision including specific provisions for control by the wife of her personal earnings, of the revenues from her separate property, of property purchased with special community funds and of the income from such property. Such a revision, however, should place a commensurate responsibility on the wife for the care of the family, including liability for the husband’s necessaries. If the wife is not to receive such control, then legislation is needed to clarify the husband’s control over the wife’s earnings and items purchased with her earnings and revenues, for in the usual family situation, while it may be desirable that one spouse rather than the other have control of these items, it is imperative that this control be definitely vested in one or the other and that its scope be clearly defined.

\textit{Durwood Douglas Crawford}

\textsuperscript{200} Huie, supra note 7 and accompanying text.
APPENDIX

Legal Rights of Married Women in Texas

I. Applicable Statutes Before The 1957 Amendments

Art. 4614 Wife's Separate Property

All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as [sic] also the increase of all lands thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.

Art. 4616. Wife's Separate Property Protected

Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband.

Art. 4623. Subject to Debts of Wife

Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract.

Art. 4626. Application to be Feme Sole

Any married woman, with the consent of and joined by her husband, may apply by written petition addressed to the district court of the county in which she may desire to transact business for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes;
such petition shall set out the causes which make it to the advantage of said married woman to be so declared feme sole, and shall be filed and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be binding on her.

II. APPLICABLE STATUTES AFTER THE 1957 AMENDMENTS

The following amendments became effective January 1, 1958. The act included a saving clause making it inapplicable to transactions completed prior to January 1, 1958 and to suits filed before that date. Article 4626 was not changed by the 1957 amendments.

Art. 4614. Wife's Separate Property

(a) All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward, by gift, devise, or descent, as also the increase of all lands thus acquired, is the separate property of the wife.

(b) The wife shall, if she be 21 years of age or over and so elects as provided in subsection (d), have the sole management, control, and disposition of her separate property, both real and personal; and in connection therewith, she may, in her own name, contract and be contracted with, sue and be sued, without the joinder of her husband, and her coverture shall not be a defense in any suit or action based on such contracts. Such of her separate property as is not exempt under the laws of Texas in such case shall be subject to forced sale for the payment of her debts. The community property of the husband and wife, with the exception of the wife's personal earnings and the revenue from her separate property, shall never be subject to the payment of debts contracted by the wife except for those contracted for necessaries furnished herself and children.

(c) If the wife shall not elect to have sole management, control, and disposition of her separate property, the joinder of the husband shall be necessary to the encumbrance or conveyance by the wife of
her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law.

(d) A married woman 21 years of age, or over, may file with the County Clerk of the county of which she is a resident, a duly acknowledged statement that she thereby elects to have sole management, control and disposition of her separate property. From and after the date of filing of such statement, which shall be recorded by the County Clerk in the Deed Records of said county, such married woman shall have the full authority to deal with her separate property as set forth in subsection (b) and the limitation upon such authority contained in subsection (c) shall not thereafter apply.

Art. 4616. Wife's Separate Property Protected

Neither the separate property of the wife, her personal earnings, nor the revenue from her separate property shall be subject to the payment of debts contracted by the husband nor claims arising out of the torts of the husband.

Art. 4623. Subject to Debts of Wife

Neither the separate property of the husband nor the community property other than the personal earnings of the wife and the revenues from her separate property shall be subject to the payment of debts contracted by the wife except those contracted for necessaries furnished her or her children.