

Opinion No. 18-2114

August 1, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Mrs. W. E. Lindsey, Santa Fe, New Mexico.

Control of Husband Over Community Property.

OPINION

In response to your oral request for an opinion relative to the rights of the husband over the control and disposition of personal property belonging to the community, we advise as follows:

Our law relative to community property, and the rights of the husband therein, is found in Chapter 84, of the Laws of 1915. Section 1, of this Act, is in part as follows:

"The husband has the management and control of the personal property of the community, and during coverture the husband shall have the sole power of disposition of the personal property of the community, other than testamentary, as he has of his separate estate; but the husband and wife must join in all deeds and mortgages affecting real estate."

From the foregoing quotation it would seem that the husband has absolute control and dominion over the personal property belonging to the community, and that he can dispose of same in any manner he sees fit. As a general proposition this is correct, but it is subject to some exceptions. It seems to us that the power given the husband by this section of the Statutes, makes him only, the agent for the community, and as such agent he could make any ordinary disposition of the community property of a personal nature. He could not dispose of the personal property belonging to the community in fraud of the wife's rights, and it is our opinion that in a proper suit, equity would enjoin such attempted disposition.

While not exactly in point, but with reference to the effect of a statute similar to ours, the Supreme Court of Washington, in the case of Schramm v. Steele, 97 Washington, 309, said:

.'These considerations make it plain that the statute, in conferring upon the husband the management and control of the community property, though giving him the absolute power of disposition of community property, intends no more than to make him the statutory agent of the community. Marston v. Rue, 92 Wash. 129, 159 Pac. 111. The words of the statute are certainly no broader than those often employed in general powers of attorney for the management and disposition of personal property."

In 5, Ruling Case Law, page 854, the rule to the effect that the husband cannot convey community property in fraud of the wife's rights, is thus stated:

"The husband cannot alienate community property in fraud of the wife's rights, or make voluntary disposition with the view of defrauding or defeating her claims."

In the case of Smith v. Smith, 12 Cal. 216, 73 American Decisions 533, the supreme court of California held that a voluntary disposition of the community property by the husband, with a view of defeating the wife's claims thereto, would not be supported by the law.

In Peck v. Brummagim, 31 Cal. 447, the California court held that a voluntary disposition of the community property by the husband with a view of defrauding or defeating the claims of the wife, would not be permitted.

In a recent decision, reported in 190 S. W. 1123, the Supreme Court of Texas, had the following to say regarding the status of community property, and the rights of the husband therein:

"The community status, of course, has been likened to a partnership. It has the elements of gains and losses, based upon the presumed labors of each, irrespective of the real industry of either spouse. As to community property, though the wife is particularly a passive partner, viewing her powers to act for the community, except probably where she acts as the agent, or implied agent, of the husband for the community, or for the family. The husband has the real management, disposition and control, with the exception of the conveyance of the homestead, or when abandoned by the husband, **or except where the property is conveyed in fraud of the wife.**"

We think it may be safely stated as a general proposition, that even under the statute giving the husband sole power to dispose of personal property belonging to the community, if he attempts to dispose of it for the purpose of defrauding or defeating the wife's claims, the court will protect the wife against such disposition.