

**The Property Rights of Women:
From Coverture to Femme Sole Status in the District of Columbia**

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The status of women’s property rights in the District of Columbia, particularly for married women, is an important part of American legal history. A crucial moment arrived with the 1869 Act regulating the Rights of Property of Married Women in the District of Columbia. While the Act marked a profound legislative rejection of the past, it did not fully extinguish the restrictive framework of Common Law Coverture. To understand the limitations of this legislative change, one must first understand the limitations on women’s rights to own and control property imposed by the colonial legal framework.

The history of women’s rights to own and control property in the District of Columbia traces back to English Common Law. Before these traditional doctrines were modified by legislative statutes, a woman’s legal status was determined by her marital status. If a woman was single, widowed, or divorced, she was considered a *femme sole*, a term meaning “a woman alone.” As a *femme sole*, she possessed the right to own and control property, enter into contracts, sue, and be sued in her own name.

Recorder's Form 2 SHORT FORM	No. 29526	RECORDED October 11, 1944 AT 2:42 P.M.
<h2 style="margin: 0;">CODE DEED</h2>		
THIS DEED, made this 31st ----- day of July ----- in the year one thousand nine hundred and forty-four by and between Emma J. Minton, a feme sole, of Prince George's County, Maryland, -----		
----- part y of the first part, and		
Morley L. Fyock, of the District of Columbia, ----- part y of the second part:		

Once a woman married, her legal identity was subsumed into her husband’s under the Doctrine of Coverture. She then became a *femme covert*, meaning “a covered woman.” Sir William Blackstone, the defining voice of the common law tradition, famously summarized the principle of *coverture* by stating that “the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband.”¹ Under coverture, the husband gained complete control and the right to manage and

¹ William Blackstone, Commentaries on the Laws of England *442 (Univ. of Chi. Press 1979) (1765).

collect the rents and profits from his wife's real property. This effectively rendered her financially dependent and legally silent. Therefore, a married woman had no legal identity.

This English Common Law framework existed in the District of Columbia until April 10, 1869, when An Act regulating the Rights of Property of Married Women in the District of Columbia was enacted by Congress. The Act declared:

That in the District of Columbia the right of any married woman to any property, personal or real, belonging to her at the time of marriage, or acquired during marriage in any other way than by gift or conveyance from her husband shall be as absolute as if she were femme sole, and shall not be subject to the disposal of her husband nor liable for his debts.²

The 1869 Act appears as a rejection to the historical Doctrine of Coverture, as this Act legally granted the independent property status of *femme sole* to married women in D.C. However, the Act's liberation of married women was not absolute. By excluding property acquired by "gift or conveyance from her husband," the statute left a significant loophole. This exception meant that while a woman could control property she brought into the marriage or earned herself, any asset transferred to her by her spouse was still governed by the old restrictions of the common law. This distinction proved fatal to the full grant of women's property rights.

The consequences of this exception were seen in the Court of Appeals of Maryland in *Diggs v. McCullough* (1889). In this case, Annie McCullough, a dressmaker, handed her business earnings to her husband to invest. Mr. McCullough later conveyed a farm to Mrs. McCullough. When his creditors sued to seize the property, Annie McCullough stated she purchased the farm with her separate funds. The court ruled that because she gave her earnings to her husband without a strict contract for repayment, the money "ceased to be hers and became his." The creditors were thus allowed to seize the property.³ This case exemplifies that even decades after the 1869 Act passed, a married woman's ownership would be voided if the asset could be traced back to her spouse.

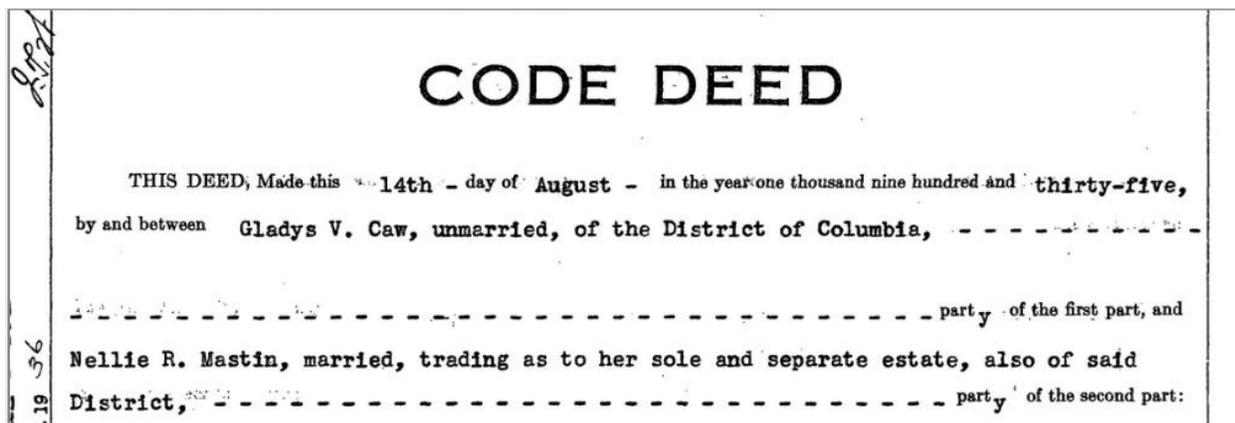
Fortunately, the gift limitations of the 1869 Act were gradually dismantled by subsequent legislation and judicial review. In the 1899 landmark case *Hamilton v. Rathbone*, the U.S. Supreme Court ruled in favor of a married woman's right to devise property. In that case, Lucy Elkin had attempted to leave property to her children that had originally been conveyed to her by her husband. While lower courts voided the will under the old gift exception, the Supreme Court reversed the decision, ruling that the revised statute granted her absolute authority to bequeath

² An Act regulating the Rights of Property of Married Women in the District of Columbia, Ch. 23, 16 Stat. 44 (1869).

³ *Diggs v. McCullough*, 69 Md. 592, 16 A. 453 (1889).

her property regardless of its source.⁴ Furthermore, Congress enacted the Act of June 1, 1896,⁵ codified in the comprehensive D.C. Code of 1901,⁶ which finally granted married women *femme sole* property rights regardless of how the assets were acquired.

Even as these statutory loopholes closed, legal challenges persisted well into the twentieth century, and particularly in the realm of credit. Wealthier families had long used “separate equitable estates” to shield assets. By paying to deed the property to a third-party trustee rather than to the wife herself, her family kept the property completely out of her husband’s grasp.⁷



However, for working women without family money, the law failed to provide the one tool necessary to acquire property: access to commercial credit. Working married women faced a distinct legal barrier that made acquiring property nearly impossible. Because common law had denied married women ownership of their labor and earnings for so long, working married women entered the new legal era with neither a credit history nor assets to pledge as security. Without property to offer as collateral, banks would not lend to them directly. In contrast, married women with existing family wealth bypassed the credit problem by using cash from their separate estate to make a down payment and pledge the land itself back to the seller to secure the rest. Because this debt was tied directly to the land rather than the woman’s person, courts generally upheld these contracts.

These systemic barriers to credit required federal intervention over a century later with the passage of the Equal Credit Opportunity Act in 1974. Prior to this legislation, banks could legally deny loans or credit cards to women unless they had a male co-signer. The Equal Credit Opportunity Act removed this barrier by making it federally illegal for creditors to discriminate

⁴ *Hamilton v. Rathbone*, 175 U.S. 414, 416, 20 S. Ct. 155, 156 (1899).

⁵ An Act to amend the laws of the District of Columbia as to married women, to make parents the natural guardians of their minor children, and for other purposes, Ch. 303, 29 Stat. 193-194.

⁶ Husband and Wife, Ch. 33, 31 Stat. 1373-1374.

⁷ Richard H. Chused, *Married Women’s Property Law: 1800–1850*, 71 Geo. L.J. 1359, 1361–62 (1983).

against any applicant on the basis of sex or marital status.⁸ By finally guaranteeing women equal access to commercial credit, the Equal Credit Opportunity Act provided the essential economic tool that the 1869 Act lacked, empowering women to build independent credit histories, secure mortgages, and exercise their property rights.

In conclusion, the 1869 Act regulating the Rights of Property of Married Women marked a pivotal, but incomplete, departure from the restrictive framework of Common Law Coverture in the District of Columbia. While the legislation legally granted married women the independent property status of *femme sole*, theoretically allowing them to own and control assets free from their husbands' disposal or debts, this liberation was not absolute. By preserving common law loopholes and failing to address systemic barriers to commercial credit, the Act cemented a financial disparity that outlived its era; the promise of *femme sole* status remained elusive until the passage of the Equal Credit Opportunity Act in 1974.

⁸ Brian Kreiswirth & Anna-Marie Tabor, *What You Need to Know About the Equal Credit Opportunity Act and How It Can Help You: Why It Was Passed and What It Is*, Consumer Fin. Prot. Bureau (Oct. 31, 2016).