

American Legal History – Russell

Laws of New York, 83d session Chap. 90 (1860).

An act concerning the rights and liabilities of husband and wife.

Passed March 20, 1860.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The property, both real and personal, which any married woman now owns, as her sole and separate property; that which comes to her by descent, devise, bequest, gift or grant; that which she acquires by her trade, business, labor or services, carried on or performed on her sole or separate account; that which a woman married in this state owns at the time of her marriage, and the rents, issues and proceeds of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected and invested by her in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts, except such debts as may have been contracted for the support of herself or her children, by her as his agent.

§ 2. A married woman may bargain, sell, assign and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name.

§ 3. Any married woman possessed of real estate as her separate property, may bargain, sell and convey such property, and enter into any contract in reference to the same, but no such conveyance or contract shall be valid without the assent, in writing, of her husband, except as hereinafter provided.

§ 4. In case any married woman possessed of separate real property, as aforesaid, may desire to sell or convey the same, or to make any contract in relation thereto, and shall be unable to procure the assent of her husband, as

in the preceding section provided, in consequence of his refusal, absence, insanity, or other disability, such married woman may apply to the county court in the county where she shall at the time reside, for leave to make such sale, conveyance or contract, without the assent of her husband.

§ 5. Such application may be made by petition, verified by her, and setting forth the grounds of such application. If the husband be a resident of the county, and not under disability, from insanity or other cause, a copy of said petition shall be served upon him, with a notice of the time when the same will be presented to the said court, at least ten days before such application. In all other cases the county court to which such application shall be made, shall, in its discretion, determine whether any notice shall be given, and if any, the mode and manner of giving it.

§ 6. If it shall satisfactorily appear to such court, upon such application, that the husband of such applicant has willfully abandoned his said wife, and lives separate and apart from her, or that he is insane, or imprisoned as a convict in any state prison, or that he is an habitual drunkard, or that he is in any way disabled from making a contract, or that he refuses to give his consent, without good cause therefor, then such court shall cause an order to be entered upon its records, authorizing such married woman to sell and convey her real estate, or contract in regard thereto without good cause therefor, then such court shall cause an order to be entered upon its records, authorizing such married woman to sell and convey her real estate, or contract in regard thereto without the assent of her husband, with the same effect as though such conveyance or contract had been made with his assent.

§ 7. Any married woman may, while married, sue and be sued in all matters having relation to her property, which may be her sole and separate property, or which may hereafter come to her by descent, devise, bequest, or the gift of any person except her husband, in the same manner as if she were sole. And any married woman may bring and maintain an action in her own name, for damages, against any person or body corporate, for any injury to her person or character, the same as if she were sole; and the money received upon the settlement of any such action, or recovered upon a judgment, shall be her sole and separate property.

§ 8. No bargain or contract made by any married woman, in respect to her sole and separate property, or any property which may hereafter come to her by descent, devise, bequest or gift of any person except her husband, and no

bargain or contract entered into by any married woman in or about the carrying on of any trade or business under the statutes of this state, shall be binding upon her husband, or render him or his property in any way liable therefor.

§ 9. Every married woman is hereby constituted and declared to be the joint guardian of her children, with her husband, with equal powers, rights and duties in regard to them, with the husband.

§ 10. At the decease of husband or wife, leaving no minor child or children, the survivor shall hold, possess and enjoy a life estate in one-third of all the real estate of which the husband or wife died seised.

§ 11. At the decease of the husband or wife, intestate, leaving minor child or children, the survivor shall hold, possess and enjoy all the real estate of which the husband or wife died seised, and all the rents, issues and profits thereof during the minority of the youngest child, and one-third thereof during his or her natural life.

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