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MARK B. DUNNELL

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CHAPTER 72

MARRIED WOMEN

3605. Separate legal existence—Women shall retain the same legal existence and legal personality after marriage as before, and every married woman shall receive the same protection of all her rights as a woman which her husband does as a man, including the right to appeal to the courts in her own name alone for protection or redress; but this section shall not confer upon the wife a right to vote or hold office, except as is otherwise provided by law. (5530)

A married woman may sue her husband in her own name in any form of action to enforce any right affecting her property (64-381, 67+20. See 104+969). If living apart from her husband she may sue him for support without seeking a divorce (91-165, 97+671). The object of this section is obscure. It does not authorize a wife to convey her realty independently of her husband (48-18, 50+1018); or to maintain an action for criminal conversation against another woman (60-372, 62+438). It does not relieve a husband of liability for his wife's torts (62-348, 64+912. See § 3608).

3606. Property rights—All property, real, personal, and mixed, and all choses in action, owned by any woman at the time of her marriage, shall continue to be her separate property, notwithstanding such marriage; and any married woman, during coverture, may receive, acquire, and enjoy property of every description, and the rents, issues, and profits thereof, and all avails of her contracts and industry, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried. (5531)

This gives to the wife the same absolute right to the use and enjoyment of her separate property that she would have if unmarried (22-29; 22-34; 34-367, 25+803; 56-33, 57+219; 64-381, 67+20; 85-83, 88+419). She is entitled to the increase and product of her own estate, real or personal (13-46, 39; 28-469, 10+781; 34-107, 24+366). Her property is not liable for her husband's debts (66-108, 68+513). Cited (36-3, 29+588; 62-348, 64+912).

3607. Contracts—Torts—Property rights and liabilities—Every married woman is bound by her contracts and responsible for her torts, and her property shall be liable for her debts and torts to the same extent as if unmarried. She may make any contract which she could make if unmarried, and shall be bound thereby, except that no conveyance or contract for the sale of her homestead, or any interest therein, shall be valid unless her husband joins with her therein. (5532)

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See 1905 c. 255

Freedom to make contracts (23-337; 28-469, 10+781; 39-490, 40+568). Liability for conversion (46-80, 48+447). If a wife joins in the covenants of her husband's deed she is liable thereon (48-408, 51+379). She may lease her real property for a term not exceeding three years without her husband's consent (85-83, 88+419). In conveyances of a homestead both husband and wife must join (104+969). This section is seemingly inconsistent with § 3335 as to the necessity of the husband joining in conveyances of his wife.

3608. Liability of husband and wife—No married woman shall be liable for any debts of her husband, nor shall any married man be liable for any torts, debts, or contracts of his wife, committed or entered into either before or during coverture, except for necessaries furnished to the wife after marriage, where he would be liable at common law. But where husband and wife are living together, they shall be jointly and severally liable for all necessary household articles and supplies furnished to and used by the family. (5533; '97 c. 10; '99 c. 325 s. 1; '01 c. 22 s. 1)

This does not change the common law rule as to the implied authority of a wife to employ servants for household purposes (28-208, 9+759; 33-348, 23+308); or to purchase household necessities (33-370, 23+539). Prior to 1897 c. 10 a husband was liable for his wife's torts (62-348, 64+912).

3609. Contracts between husband and wife—No contract between husband and wife relative to the real estate of either, or any interest therein, nor any power of attorney or other authority from the one to the other to convey real

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estate, or any interest therein, shall be valid; but, in relation to all other subjects, either may be constituted the agent of the other, or contract with the other. But in all cases where the rights of creditors or purchasers in good faith come in question, each spouse shall be held to have notice of the contracts and debts of the other as fully as if a party thereto. (5534)

1. **Contracts relating to realty**—Statute applicable though husband and wife are living apart (68-152, 70+1082). Not applicable to conveyance from one spouse to another through third party (10-50, 32; 30-519, 16+404; 64-489, 67+364). A direct conveyance from a husband to a wife is void (32-228, 20-94; 63-5, 65+91; 72-57, 74+1109. See prior to statute, 10-50, 32). One spouse cannot make a valid lease of the other's realty acting as agent or attorney (24-172; 45-515, 58+404; 69-149, 154, 72+56; 88-116, 92+521). Wife cannot release to husband her statutory interest in his realty (35-291, 28+920). Earnest money paid on contract void under this section held not recoverable where husband and wife were ready to perform (55-537, 57+156). Doctrine of estoppel applicable to contracts void under this section (41-165, 42+870; 47-491, 50+533; 48-307, 51+375). Doctrine of trust ex maleficio also applicable (93-45, 100+656. See 63-5, 65+91). Part performance does not take contract out of statute (93-45, 100+656). Statute applied (83-362, 86+336; 63-5, 65+91).

2. **Other contracts**—36-3, 29+588; 51-353, 53+716; 34-367, 25+803.

3. **Notice as to creditors—Burden of proof**—56-469, 57+1136; 34-367, 25+803; 34-107, 24-366; 39-490, 40+568.

3610. Barring interest of spouse—Whenever a married man shall be deserted by his wife, or a married woman shall be deserted by her husband, for the space of one year, or whenever he or she would, for any cause, be entitled to a divorce from such husband or wife under the laws of this state, or whenever he or she has a husband or wife that has been insane for ten years immediately prior to the time of bringing the action hereinafter named, and upon the hearing thereof shall be found to be incurably insane, he or she may bring an action in the district court of the proper county, asking for a decree which shall debar him or her so deserting or furnishing grounds for a divorce, or so found to be incurably insane as aforesaid, from any right or estate by the curtesy or in dower, or otherwise, as the case may be, in or to his or her lands, and which will give such husband or wife full authority to alien, sell and convey, and dispose of his or her lands, without the interference of or signature of the husband or wife so deserting, or being guilty of acts which would entitle the person bringing such action to a divorce, or so found to be incurably insane as aforesaid; and the court may grant such decree whenever it shall appear just or expedient; and thereupon the husband or wife shall have full control of his or her real estate, with power to convey the same without the husband or wife joining in the conveyance, and as fully as if he or she were unmarried; or the court may, by such decree, make such limitations on the power to convey such real estate as may seem meet and proper in the premises. A certified copy of such decree may be recorded in the deed records in the office of the register of deeds in any county wherever such lands or any part thereof may be situated. (5535)

22-348; 27-330, 7+267.

3611. Antenuptial contracts—Nothing in this chapter shall be construed to affect antenuptial contracts or settlements. (5536; '97 c. 10)

CHAPTER 73

ADOPTION AND CHANGE OF NAME

3612. Adoption—Petition and consent—Any inhabitant of the state may petition the district court of his county for leave to adopt any child not his own. If the petitioner be married, the spouse shall join in the petition. A person of full age may be adopted. (8016; '97 c. 214 s. 1)

3613. Consent, when necessary—No adoption of a minor shall be permitted without consent of his parents, but the consent of a parent who has abandoned