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IN RE JULIA LYONS.

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Under the first of these exceptions is the case of frequent occurrence in the English books, where a married woman acts as a sole trader according to the custom of London. *Ex parte Carrington*, 1 Atk., 206, *Lavie v. Philips*, 3 Burr., 1776 : S. C. 1 W., Black. Rep., 570. See also in Pennsylvania, *Burke v. Winkle*, 2 Sergt. and Rawle, 189 ; in South Carolina, *Newbiggin v. Pillans*, 2 Bay, 162 ; in Louisiana, *Christensen v. Stumpf*, 16 La. An., 50 ; *Spalding v. Godard*, 16 La. An., 227 ; *Boules v. Turner*, 352 ib. ; in California, *Melcher v. Cuhland*, 22 Cal., 522 ; *Abrams v. Howard*, 23 Cal., 588. Under the same head would fall those cases like *re Lyons*, *supra*, where by statute in particular states, a married woman may, under certain circumstances, contract liabilities, carry on business and sue and be sued independently of her husband, and as a *feme sole*. In these cases there would seem to be no doubt that she is amenable to the bankrupt law. As in New York : *In re O'Brien*, N. B. R. Sup., 38 ; *Graham v. Starks*, 3 N. B. R., 92. Or in Illinois : *In re Kinkead*, 7 N. B. R., 439. Thus it was held, in the last case in the United States district court at Chicago, by Blodgett, J., that where a husband and wife carried on a business in partnership, their status was such, under the statutes of Illinois relating to married women, that the firm might be proceeded against in bankruptcy ; and hence that the partnership creditors were entitled to a preference in the distribution of the assets, over a creditor of the husband, whose demand had accrued prior to the organization of the firm. And it was intimated that the wife would be separately adjudicated a bankrupt if it should be found necessary in the course of the proceeding to do so, in order to reach any individual property she might have. In the case of *Re Rachel Goodman*, 8 N. B. R., 380, determined in the United States district court for Indiana, before CRISHAM, J., the principle above stated is fully recognized ; but when applied with reference to the statutes of Indiana relating to married women, as interpreted by the supreme court of that state, the case resulted in a dismissal of the petition. It was found under the Indiana statutes, as expounded by the state supreme court, (1), that a married woman cannot engage in any kind of trade or business on her own account unless she have separate property ; (2) that if a married woman, not having separate property or means of her own, engage in and carry on business, the profits, if any there be, belong to the husband as the earnings of the wife ; and (3), that a married woman in Indiana, possessed of no separate estate, is relieved of none of the disabilities imposed upon her by the common law. The petition failed to show that Mrs. Goodman was possessed of any separate property or means with which she was carrying on her business, and it was held to follow that she could not be adjudged a bankrupt. So in the case of *Re Stichter*, 2 N. B. R., 107 ; in Minnesota, where the statute allows a married woman, under certain circumstances, to engage in trade in her own name, upon obtaining a license from a probate justice, in which case the business and profits become her separate property, and she is bound by her contracts as a *feme sole*, NELSON, district judge, held that a married woman who had been engaged in business as a member of a partnership firm, but without complying with the statute, could avail herself of the plea of coverture to defeat the bankruptcy proceedings against her.

Under the second head, which embraces the question whether a married woman may be adjudged a bankrupt where the marriage relation has been temporarily interrupted, the books furnish many instructive decisions defining the circumstances under which, independently of local custom or statute, a married woman may be sepa-

ately sued. These decisions embrace cases where a married woman lives apart from her husband on a separate maintenance ; in which case it has been held and afterwards denied, in England, that the wife may be sued at law as a *feme sole*. *Corbet v. Poelnitz*, 1 Term R., 5. *Contra*, *Compton v. Collinson* 1 H. Blacks., 350 ; *Clayton v. Adams*, 6 Term R., 604 ; *Marshall v. Ratton*, 8 Term R., 545. And Chancellor Kent states (2 Com. 161) that the rule of *Corbet v. Poelnitz* has never been adopted in this country. It has also been held in England that a wife may be sued at law whose husband is an absent alien enemy, and is under an absolute disability of returning. *Derry v. Duchess of Mazarine*, 1 Ld. Raym., 147. Or where he has been transported. *Sparrow v. Carruthers*, 2 W. Black., 1197. Or had been banished or had abjured the realm. *Lady Belknap & Wayland*, 1 Co. Lit., 123 b, 133 a. So it has been held in Massachusetts that a married woman who had been divorced *a mensa et thoro* might sue and be sued as a *feme sole* in respect of property acquired or debts contracted by her subsequently to the divorce. *Dean v. Richmond*, 5 Pick., 461 ; *Pierce v. Burnham*, 4 Metc., 303. And it has been held in the same state that a *feme covert*, whose husband had deserted her in a foreign country, and who had thereafter maintained herself as a single woman, and for five years had lived in that commonwealth, the husband being a foreigner and having never been within the United States, was competent to sue and be sued as a *feme sole*. *Gregory v. Paul*, 15 Mass., 31. And the question is now said to be settled in Massachusetts, as a necessary exception to the rule of the common law, placing a married woman under a disability to contract or maintain a suit, that where the husband was never within the commonwealth, or has gone beyond its jurisdiction, has wholly renounced his marital rights and duties, and deserted his wife, she may make and take contracts, and sue and be sued in her own name as a *feme sole*. "It is," said SHAW, Ch. J., "an application of an old rule of the common law, which took away the disability of coverture where the husband was exiled or had abjured the realm." *Gregory v. Pierce*, 4 Metc., 478. And within the meaning of this principle, the residence of the husband within another of the United States is held to be equivalent to his residence in a foreign state. *Abbott v. Bayley*, 6 Peck, 89. "But," said SHAW, Ch. J., in *Gregory v. Pierce*, *supra*, "to accomplish this change in the civil relations of the wife, the desertion by the husband must be absolute and complete ; it must be a voluntary separation from and abandonment of the wife, embracing both the fact and intent of the husband to renounce *de facto*, as far as he can do it, the marital relation, and leave his wife to act as a *feme sole*. Such is the renunciation, coupled with a continued absence in a foreign state or country, which is held to operate like an abjuration of the realm." In *Love v. Moynahan*, 16 Ill., 277, 282, the supreme court of Illinois, after reviewing many modern cases, hold the law to be, "that where the husband compels the wife to live separate from him, either by abandoning her, or by forcing her, by whatever means, to leave him, and such separation is not merely temporary and capricious, but permanent and without expectation of again living together, and the wife is unprovided for by the husband in such manner as is suited to their circumstances and condition in life, she may acquire property, control her person and acquisitions, and contract, sue and be sued in relation to them, as a *feme sole*, during the continuance of such condition."

So it has been held in a recent case in Georgia, that, on general principles, a married woman whose husband has deserted her and resided in another state, has the right