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see pp 5 and 6

UNITED STATES DEPARTMENT OF LABOR

FRANCES PERKINS Secretary

WOMEN'S BUREAU

MARY ANDERSON, Director



U.S. Women's Bureau.

The Legal Status of Women in the
United States of America

January 1, 1938

REPORT FOR

NEW YORK STATE

*An advance printing of individual State material, constituting
part of a compilation now being prepared to show the present
legal status of women in the United States of America*



BULLETIN OF THE WOMEN'S BUREAU, No. 157-31

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CITY OF LONDON POLYTECHNIC
FAWCETT COLLECTION

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

In response to urgent requests for such information, a report as to the legal status of women in the United States of America is being prepared by the Women's Bureau, the official agency in this country having to do with the conservation and advancement of the welfare of women.

The report is based on an original search of, and compilation from, the Constitutions, official statutes, and related decisions of courts of last resort of the Federal Government and the several States, as well as pertinent law texts of recognized authority.

This pamphlet presents a digest of the material compiled for a single State, which later will be incorporated in the complete report.

A copy of a preliminary summary of the incomplete report for the United States was sent by the Women's Bureau, at the request of the Secretary of Labor, to the Secretary of State for transmission to the Secretary-General of the League of Nations. It was printed as an official League of Nations document, September 29, 1937 (League of Nations, Official No. A. 14 (e) 1937. V). A mimeographed copy of this preliminary summary can be obtained from the Women's Bureau.

II

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, April 23, 1938.

MADAM: I have the honor to transmit to you a report on the legal status of women in New York State. This is a section of a full report, now in progress, to include all the States, a type of information for which the Women's Bureau has had repeated requests. A preliminary report, including complete material for some States, partial information for others, has been sent to Geneva by the Secretary of State in response to a request from the Secretary-General of the League of Nations.

The section for each State represents a thorough search of statutes and decisions of appellate courts construing statutes or establishing judicial policy.

These studies are the work of Sara L. Buchanan, of the Women's Bureau research staff and member of the bar of Mississippi and the District of Columbia, under the general direction of Mary Elizabeth Pidgeon, chief of the research division. Miss Buchanan was assisted by Mary Loretta Sullivan.

After completion of the report for each State, the material was sent for approval or suggestions by competent persons within the State.

Respectfully submitted.

MARY ANDERSON, *Director.*

HON. FRANCES PERKINS,
Secretary of Labor.

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

Any conclusion bearing on woman's status under the laws of the United States of America must take into account the common law, on which the fabric of the Nation's jurisprudence is woven.

The common-law rules of property sprang from various causes, notably tradition, military or economic exigency, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

In general, it has been the rule that where specific statutes abrogating them have not been enacted, common-law principles apply. In the century just past, much ground has been covered in superseding by specific laws the old common-law injustices to women. The largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the efforts of husband and wife after marriage.

The material considered centers largely around the woman in the marriage relation, since at the present time the legal status of the unmarried woman is practically identical with that of the unmarried man, with the exception of discriminations occurring in some States in certain political privileges (such as jury service, election or appointment to public office), or variance between men and women in the statutory age of majority or age of consent to marriage, or rights of property exemptions from seizure for debt.

NEW YORK STATE

SOURCES

Constitution of New York State.
 Cahill's Consolidated Laws of New York, 1930.*
 Supplements, 1931-1935 and 1936.
 Session Laws, 1935, 1937.
 Cahill's Civil Practice, 1937.
 New York Reports.
 New York Supplement.
 New York Miscellaneous Reports.
 New York Appellate Division Reports.
 Northeastern Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article numbers following the abbreviation Const., as (Const., art. 13), placed after the related subject matter.

References to Cahill's Consolidated Laws, 1930, are in parentheses, thus (ch. 14, sec. 51); to the Supplements (Supp., 1936, ch. 14, sec. 15); and to the Session Laws (1937, ch. 669). Citations from the Civil Practice Code are designated as (C. P. Act, sec. 349), and (Surrogate's Court Act, sec. 200).

Case citations, definitely construing statutes or declaring judicial policy in the absence of express statutory provision, are indicated by numerical footnote references, and appear immediately after the related paragraphs. Cases showing historical development of a statute or policy are followed by the abbreviation (Hist.).

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire State series. Cross references among topics employ these numbers for brevity, as "See Number 6," which refers to the subject heading "Separate Earnings of Married Woman—Ownership and Control."

*For convenience of reference to other compilations of New York State Laws, a list is supplied of chapter numbers appearing in the text, with the respective short titles in general use:

Chapter number (Cahill's)	Official short title	Chapter number (Cahill's)	Official short title
8-----	Civil Service Law.	41-----	Penal Law.
13-----	Decedent Estate Law.	42-----	Personal Property Law.
14-----	Domestic Relations Law.	48-----	Public Officers Law.
23-----	General Construction Law.	51-----	Real Property Law.
30-----	Insurance Law.	66-----	Workmen's Compensation Law.

NEW YORK STATE

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Minors of both sexes attain majority at the age of 21 years (ch. 14, sec. 2).

The lawful marriage of a female minor terminates a general guardianship as to her person, but not with respect to her property (ch. 14, sec. 84).

2. Contractual Powers of Minors.

Minors of either sex are incapable at law to make binding transfers of their estate or interest in real property (ch. 51, sec. 11).^{1 2}

Nor may they dispose of their real property by will (ch. 13, sec. 10); but a minor 18 years of age or over may dispose of personal property by will (ch. 13, sec. 15).

Where necessaries are sold and delivered to an infant, the law requires him to pay a reasonable price for them. "Necessaries" as here used means goods suitable to the condition in life of the infant and to his actual requirements at the time of delivery (ch. 42, sec. 83).

A jointure does not bar dower interest if executed by a female minor before marriage without her father or guardian joining in the conveyance creating the jointure (ch. 51, sec. 197).

¹ *Stephenson v. Naumann* (1922), 195 N. Y. S. 768.

² *Hook v. Harmon Nat. Real Estate Corporation* (1936), 297 N. Y. S. 79.

3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.

Personal property.

The exemptions of personal property to a householder (C. P. Act, sec. 665) are by express statute made available to women on the same terms as to men (C. P. Act, sec. 666).

Men and women have equal protection under the statutory exemptions from legal process of (1) pensions, annuities, or retirement allowances (ch. 8, sec. 70); (2) benefits under the workmen's compensation law (ch. 66, sec. 33); and (3) proceeds of policies of group insurance (ch. 30, sec. 101-d).

The earnings of a judgment debtor for his personal services rendered within 60 days next before the action was begun, are exempt where it is established satisfactorily that those earnings are necessary for the use of a family wholly or partly supported by his labor (C. P. Act, sec. 792).

Homestead.

The right of homestead exemption inures to a married woman under the same circumstances and subject to the same exceptions that apply to a householder having a family (C. P. Act, secs. 671-673).

After the owner's death, the homestead exemption continues as follows: (1) If the decedent was a woman, it continues to her children until the youngest of them attains majority; (2) if the decedent was a man, it continues for the benefit of his widow and surviving children until the majority of the youngest child and the death of the widow (C. P. Act, sec. 674).

4. Property of Married Woman Owned at Marriage—Ownership After Marriage.

See Number 9 (reference ch. 14, sec. 50).

5. Contractual Powers of Married Women.

General.

A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment, and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade, or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife cannot contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife. Judgment for or against a married woman may be rendered and enforced in a court of record, or not of record, as if she were single (ch. 14, sec. 51).

A contract made between persons in contemplation of marriage remains in full force and effect after the marriage takes place (ch. 14, sec. 53).

Right to hold and transfer real property.

A citizen of the United States is capable of holding real property within this State and of taking the same by descent, devise, or purchase. Alien friends have the same rights as native-born citizens (ch. 51, sec. 10).

A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest (ch. 51, sec. 11).

Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants, or tenants by the entirety. If so expressed in the instrument of partition or division, such instrument bars the wife's right to dower in such property, and also, if so expressed, the husband's tenancy by curtesy (ch. 14, sec. 56).

The husband no longer has such an interest in his wife's real estate as to require his joinder in her conveyance, as at common law.¹

Partnership between spouses.

A husband and wife may carry on a business as copartners, and the wife's interest belongs to her and not to her husband.²

Contract with husband for services not in ordinary household duties.

The earlier cases, in construing the then existing married women's acts, followed the principle that the common-law right of a husband to the services of his wife had not been modified by those statutes to

the extent of imposing any implied liability upon the husband to remunerate the wife for services rendered to him by her.^{3 4}

"* * * Such services as she does render him, whether within or without the strict line of her duty, belong to him. * * * If he promises to pay her a certain sum for them, it is a promise to make her a gift of that sum. She cannot enforce such a promise by a suit against him."⁵

A recent decision upholds the earlier cases on this point, despite the enlarged powers of the wife under the present married women's acts. Services rendered by a wife in the management of rooming houses owned by her husband were not such unusual services as to warrant recovery based on an implied promise to compensate her for them.⁶

The provision of the statute that a wife may recover compensation for her services (ch. 14, sec. 60) has been held not to create any implied obligation on the part of her husband, and to have reference only to services she may render to third parties outside her household.⁷

Right to contract for insurance on husband's life.

A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period or for the term of his natural life. Where a married woman survives such period or term, she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband (ch. 14, sec. 52); except that these creditors have a right in the proceeds of such a policy to the amount of premiums paid by the insured in fraud of his creditors (ch. 30, sec. 55-a).⁸

This statute [ch. 14, sec. 52] was intended to afford financial protection to widows, and the courts are not to go out of their way to limit its scope in that connection.⁹

¹ *Hope v. Seaman* (1909), 119 N. Y. S. 713, affirmed as to this (1912), 204 N. Y. 563; 97 N. E. 1106.

² *Suan v. Caffé* (1890), 122 N. Y. 308; 25 N. E. 488; 9 L. R. A. 593.

³ *Matter of Callister* (1897), 153 N. Y. 294, 301; 47 N. E. 268; 60 A. S. R. 620.

⁴ *Porter v. Duval* (1892), 131 N. Y. 314, 317; 30 N. E. 122.

⁵ *Blacchinska v. Howard Mission, etc.* (1892), 130 N. Y. 497, 502; 29 N. E. 755.

⁶ *Martin v. Bronx County Trust Co.* (1932), 237 App. Div. 246; 260 N. Y. S. 344.

⁷ *Matter of Goff* (1909), 62 Misc. 510; 116 N. Y. S. 650.

⁸ *U. S. Mortgage and Trust Co. v. Ruggles* (1932), 258 N. Y. 32; 179 N. E. 250.

⁹ *Lukasik v. Czarczynski* (1916), 132 N. Y. S. 1.

6. Separate Earnings of Married Woman—Ownership and Control.

A married woman shall have a cause of action in her own sole and separate right for all wages, salary, profits, compensation, or other remuneration for which she may render work, labor, or services, or which may be derived from any trade, business, or occupation carried on by her, and her husband shall have no right of action therefor unless she, or he with her knowledge and consent, has otherwise expressly agreed with the person obligated to pay such wages, salary, profits, compensation, or other remuneration (ch. 14, sec. 60).

However, this statute does not alter the common-law rule, still in effect, that "A wife's earnings during coverture belong to her husband, unless he relinquishes such right in her favor."¹

This statute was not passed to overcome any presumption in the husband's favor existing at common law, but evidently is designed to make perfectly clear that principle which is to be found in many of

the decisions construing the enabling statutes in the interest of married women and providing a presumption in their favor.²

The statute relates to services rendered by a married woman to others in occupations or business disconnected from the duties performed by the wife as a member of her husband's household.³

See Number 5, "Contract with husband for services not in ordinary household duties."

¹ *Robison v. Lockridge* (1930), 244 N. Y. S. 663, 665.

² *Stevens v. Cunningham* (1905), 181 N. Y. 454, 462.

³ *Johnson v. Tait* (1916), 97 Misc. 48; 160 N. Y. S. 1000.

7. Liability of Married Woman for Family Necessaries.

If she buys on her own account, that is, pledges her personal credit, she must expect to be herself liable for the price.^{1 2}

The reasonable funeral expenses of the husband, when his estate is incapable of paying them, are chargeable against the wife's estate, if adequate, as an obligation imposed by law, arising out of the rights and duties incident to the marital status and from a public policy to decently bury the dead.³

¹ *Tiemeyer v. Turnquist* (1881), 85 N. Y. 516, 522; 39 Am. Rep. 674.

² *Bendel, Inc., v. Edeson* (1925), 210 N. Y. S. 141; 125 Misc. 433.

³ *Apostle v. Pappas* (1935), 277 N. Y. S. 400, 405; 154 Misc. 497.

8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.

No decree of court, recorded inventory of separate property, or other formal procedure is required for a married woman to engage in a separate business.

9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.

Property, real or personal, owned by a married woman at the time of her marriage, or acquired by her as prescribed in the law, with the rents, issues, proceeds, and profits from it, continues to be her sole and separate property as if she were unmarried, and is not subject to her husband's control or disposal nor liable for his debts (ch. 14, sec. 50).

But where a wife permits her husband to collect all the income from her separate estate and use it for his own purposes, or to pay the household and family expenses from it, a gift of the income from the wife to the husband is presumed to have taken place. She cannot later demand that he account to her for it. Not until the permission is specifically revoked by the wife does the husband's liability arise to account to her for income thereafter received.¹

If the husband acquires property of the wife by antenuptial contract or otherwise, he is liable for her debts contracted before marriage, but only to the extent of the property so acquired (ch. 14, sec. 54).

Estates by the entirety.

Estates by the entirety and the creation of them by a conveyance to a husband and his wife are clearly defined and fixed rules of property in New York law.^{2 3 4}

But the common-law rule as to the use of property so held has been modified by the married women's separate property acts to the extent that each of the parties is entitled to one-half of the rents and profits

during the joint lives, with power to each to dispose of or to charge his or her moiety during the same period.⁵

¹ *T. G. W. Realties v. Long Island Bird Store* (1934), 272 N. Y. S. 602, 607.

² *Bertles v. Numan* (1883), 92 N. Y. 152; 44 Am. Rep. 361. (Hist.)

³ *Matter of Klatzl* (1915), 216 N. Y. 83, 85; 110 N. E. 181.

⁴ *In re Maguire's Estate* (1937), 296 N. Y. S. 528, 531.

⁵ *Hiles v. Fisher* (1895), 144 N. Y. 306, 315; 39 N. E. 337; 30 L. R. A. 305; 43 A. S. R. 762.

10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.

New York is not a community-property jurisdiction. The common-law rule governs that the husband is entitled to the services of the wife by right of marriage.

11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.

A married woman has a right of action for an injury to her person, property, or character, or for an injury arising out of the marital relation, as if unmarried (ch. 14, sec. 57).

All sums that may be recovered in actions or special proceedings by a married woman for damages to her person, estate, or character are her separate property (ch. 14, sec. 51).

It is noteworthy that the husband has a property right in the marriage relation and may sue in damages for loss of consortium,¹ but the wife has no reciprocal right² even though the injury to the husband deprive her of the opportunity of motherhood.³

¹ *Lagergren v. National Coke & Coal Co.* (1909), 117 N. Y. S. 92.

² *Goldman v. Cohen* (1900), 63 N. Y. S. 459.

³ *Landwehr v. Barbas* (1934), 270 N. Y. S. 534.

12. Action to Recover Damages for Willful or Negligent Injuries to the Person or Property of One Spouse by the Other—Respective Rights of Husband and Wife.

A married woman is liable for her wrongful or tortious acts (ch. 14, sec. 57).

Since September 1, 1937, a married woman has a right of action against her husband for his wrongful or tortious acts resulting to her in any personal injury as defined by law [ch. 23, sec. 37-a], or resulting in injury to her property, as if they were unmarried, and she is liable to her husband for her wrongful or tortious acts resulting in any such personal injury to her husband or to his property, as if they were unmarried (1937, ch. 669, secs. 1, 6).

13. Competency of Spouses to Testify For or Against Each Other.

In civil actions generally, the husband and wife are competent as witnesses (C. P. Act, sec. 346). Neither spouse is competent to testify against the other in an action or special proceeding founded on a charge of adultery, except to prove the marriage or disprove the allegation of adultery. Or if the offending party offers evidence tending to prove bad faith on the part of the plaintiff as defined in section 1153 of the Civil Practice Act, the plaintiff is competent to testify in disproof of any such defense. A husband or wife is not to be compelled or, without consent of the other if living, allowed to disclose a confidential communication made by one to the other during marriage (C. P. Act, sec. 349).

In criminal actions, the husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such a person, subject to the rule that neither can be compelled to disclose a confidential communication, made by one to the other during their marriage (ch. 41, sec. 2445).

14. Disposition of Separate Property by Will—Extent of Married Woman's Right.

The statutory right to distribute separate property by will is available to men and women upon the same terms (ch. 13, secs. 10, 15). "No person having a husband, wife, child, or descendant or parent" may by will give to "any benevolent, charitable, literary, scientific, religious or missionary society, association, corporation or purpose, in trust or otherwise," more than one-half of his or her net estate (ch. 13, sec. 17).

Neither spouse may by will disinherit the other. See Number 17.

15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.

Absolute interest.

Since September 1, 1930, the real property of a deceased person, male or female, not devised, descends, and the surplus of his or her personal property, after payment of debts and legacies, and if not bequeathed, is distributed to the surviving spouse as follows:

1. One-third part to the surviving spouse and the residue in equal portions to the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If both parents survive, and no child or descendant, the surviving spouse takes \$5,000 and one-half of the residue, and the parents each take one-half of the balance; if there be no surviving spouse, the parents each take one-half of the whole.

3. If one parent survives, and no child or descendant, the surviving spouse takes \$5,000 and one-half of the residue, and the surviving parent takes the balance; if there be no surviving spouse, the surviving parent takes the whole.

4. If there be no descendant, parent, brother or sister, nephew or niece, the surviving spouse is entitled to the whole, but if there be a brother or sister, nephew or niece, and no descendant or parent, the surviving spouse takes \$10,000 and one-half of the residue, and the balance descends and is distributed to the brothers and sisters and their representatives (ch. 13, sec. 83). See also Number 29.

The husband is entitled to the same distributive share in the personal property of his deceased wife as that to which a widow is entitled in the personal property of her husband (ch. 13, sec. 100).

The surviving spouse is empowered to receive from an employer of the deceased husband or wife, without administration proceedings, any unpaid wages or personal earnings due to the decedent, if the amount does not exceed \$150 (ch. 13, sec. 103-a).

Life interest.

The common-law estate of curtesy, with "all its incidents," has been abolished as to the real property of a wife dying after August 31, 1930 (ch. 51, sec. 189).

Dower of one-third part of all real property of the husband vests in the widow only when the marriage occurred prior to September

1, 1930, and as to property in which the husband at any time during the marriage and prior to September 1, 1930, had acquired an estate of inheritance (ch. 51, sec. 190).

The statutory absolute share of the surviving spouse in the real property of a deceased spouse [ch. 13, sec. 83] is declared by law to be in lieu of any and all rights of dower (ch. 13, sec. 82).

Protection of statutory interest.

The statutory rights of husband and wife in each other's estate may not be destroyed by transfers under which the grantor retains the control and benefit of his property during life, but which upon death pass the property to others than those entitled to receive it under the statute.

Under the statute, husbands and wives have the utmost freedom of control over their respective properties and may transfer them as they will in normal course during their lives. They may not, however, strip themselves of their property for the sole purpose of depriving those that the statute intended to protect of their right to inherit.¹

Election by widow when entitled to dower.

A widow entitled to dower under the terms of the statute [ch. 51, sec. 190], may take a share outright in the real property of her intestate spouse, or instead may elect to take her dower interest.²

If the husband made provision by will for the widow in lieu of dower, she must make her election between such provision and her right of dower. She cannot accept both will and dower (ch. 51, sec. 200). The election of dower must be made within the time and in the manner prescribed by law (ch. 51, sec. 201).

For the elective right of a widow entitled to the statutory share, but not to dower, see Number 17.

¹ *Bodner v. Feit* (1936), 247 App. Div. 119; 286 N. Y. S. 814, 817.

² *Bush v. Bush* (1934), 270 N. Y. S. 14, affirmed (1934); 241 App. Div. 912; 271 N. Y. S. 1047.

16. Provision for the Surviving Spouse During Administration of the Estate.

A widow may remain in the chief house of her husband 40 days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent; and in the meantime she may have reasonable sustenance out of the estate (ch. 51, sec. 204).

A surviving spouse is entitled to have set off as his or her property the following items when they appear among the assets of the decedent spouse's estate:

1. All housekeeping utensils, musical instruments, sewing machine, and household furniture used in and about the house and premises, fuel and provisions, and the clothing of the deceased, in all not exceeding in value \$1,000.

2. The family Bible, family pictures and school books, used by the family, and books not exceeding in value \$50, kept and used as part of the family library.

3. Domestic animals with their necessary food for 60 days, the farm machinery, and one motor vehicle or tractor, not exceeding in value \$450.

4. Money or other personal property not exceeding in value \$300, subject, however, to prior payment of the reasonable funeral expenses of the decedent.

No allowance in money or other property is to be made under subdivisions 1, 2, and 3 if the articles enumerated do not exist. (Surrogate's Court Act, sec. 200).

These provisions apply to estates or wills of persons dying after August 31, 1930 (1935, ch. 209).

No property or money may be set apart under this statute to a surviving spouse who cannot inherit from a deceased intestate spouse, nor inherit or claim any rights against the estate of a deceased spouse leaving a will (Surrogate's Court Act, sec. 200).

17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

The surviving spouse of a testator has a personal right of election to take his or her share of the estate under the statute of descent and distribution, subject to the limits, conditions, and exceptions prescribed by the Decedent Estate Law. The intestate share, in case of such an election, cannot include more than one-half of the decedent's net estate. This right of election applies only to cases in which the testator died after August 31, 1930, and left a will executed after that date (ch. 13, sec. 18) (Supps., 1931-1935 and 1936, ch. 13, sec. 18).

The purpose of this statute is to prevent disinheritance.¹

For interesting discussions of the development of the present law see *Matter of Greenberg* (1931), 253 N. Y. S. 667, affirmed (1933), 261 N. Y. 474, 87 A. L. R. 833; *In re Churchman's Estate* (1934), 274 N. Y. S. 664, 153 Misc. 272.

¹ *In re Collins' Estate* (1935), 282 N. Y. S. 728, 733.

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.

If an applicant for a marriage license is under 21 years of age, documentary proof of age is required (1937, ch. 706). If the man is under 21 but not under 16 years of age, or the woman is under 18 but not under 14 years of age, the written consent of the parents, if living, or guardians, or persons having custody of the applicant under age must be filed. Such consent must be under oath, upon personal appearance before an authorized officer. If the woman is under the age of 16 years, and not under 14 years of age, the written consent of the judge of the children's court having jurisdiction must be obtained before a license to marry can be issued (ch. 14, sec. 15) (Supp., 1931-1935, ch. 14, sec. 15).

A marriage is prohibited in which the man is under the age of 16 years or the woman under 14 years (ch. 14, sec. 15-a). No license may be issued to a male under 16 or female under 14 years. See Opinions Attorney General, 235, (1927).

It should be noted that in the statute which defines voidable marriages, the age of consent for the parties is stated as 18 years (ch. 14, sec. 7). The inconsistency of this statute with chapter 14, section 15, above cited, is pointed out in *Kellogg v. Kellogg* (1934), 203 N. Y. S. 757, 763, 122; Misc. 734.

19. Validity of Common-Law Marriage.

No marriage is valid unless solemnized in accordance with the statutory requirements (ch. 14, sec. 11) (Supp., 1931-35, ch. 14, sec. 11, subsec. 3).

However, this provision, which in effect prohibits common-law marriages, operates only on relationships entered into on or after April 29, 1933.¹

¹ *In re Mahel's Estate* (1934), 274 N. Y. S. 625.

20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.

Each party to an application for license to marry must submit a statement in prescribed form that he or she has not been infected with any venereal disease, to his or her knowledge, or, if so infected within 5 years, has had a laboratory test which shows freedom from such infection at the time the application is filed. These statements must be signed and verified, or put in affidavit form, before the officer empowered to issue marriage licenses (ch. 14, sec. 15).

Seventy-two hours must elapse between the date and hour of issuance of the marriage license and the solemnization of the marriage. The officiating person must note on the marriage license the day and hour of the ceremony. The only exception permitted is when authorization for earlier ceremony is granted by a court of record as provided by statute (1937, ch. 294).

21. Interstate Cooperation in Marriage Law Enforcement.

There is no statute prohibiting the evasion of marriage laws of other States by parties marrying in this State. The general policy is that the State recognizes as valid a marriage which is valid where contracted.¹ But this general rule does not apply to a marriage which is by its nature repugnant to the public policy of the State, or contrary to its positive laws.²

¹ *In re Burke's Estate* (1932), 256 N. Y. S. 862, 865.

² *People v. Kay* (1931), 252 N. Y. S. 518, 522.

22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.

A marriage is absolutely void if it is incestuous or bigamous (ch. 14, secs. 5 and 6).

A marriage is voidable and may be dissolved on the ground either of non-age, lack of understanding, physical incapacity, enforced consent to the marriage, incurable insanity for a 5-year period, absence for 5 successive years immediately preceding the filing of the complaint without being known to be living during that time. Under the ground of insanity the statute provides that if the husband seeks annulment on the ground of the wife's insanity, the court, before rendering judgment, must exact approved security for her suitable care and maintenance during life (ch. 14, sec. 7) (Supp., 1936, ch. 14, sec. 7-a).

23. Grounds for Divorce—Respective Availability to Spouses.

Absolute divorce.

A husband or a wife has equal right to maintain an action against the other to procure a judgment divorcing the parties and dissolving the marriage on the ground of adultery (C. P. Act, sec. 1147).

Limited divorce or legal separation.

An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever or for a limited time, for one of the following causes: (1) Cruel and inhuman treatment; (2) such conduct on the part of the offending spouse as may render it unsafe and improper for the aggrieved party to cohabit with him or her; (3) abandonment.

A wife is entitled to separation upon proof of the neglect or refusal of her husband to provide for her (C. P. Act, sec. 1161).

A defendant from whom a divorce is granted for adultery may not marry again in this State during the lifetime of the complainant unless the court granting the divorce modify the provision after 3 years have elapsed from the date of the decree, upon proof of good conduct by the defendant. This applies also to a defendant from whom divorce for adultery was obtained in another State, and it must be shown that no legal impediment to another marriage exists in the State where the decree was rendered. However, the parties to the divorce may remarry each other at any time (ch. 14, sec. 8).

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.

The father is entitled to his infant child's earnings and is liable for his support.¹

The mother is not entitled to sue for injuries to her minor child when the father is living and no evidence is introduced to take the case out of the general rule that the right to the child's services presumptively belongs to the father.²

A parent who intends to claim the wages of a minor child must notify the child's employer in writing of such intention within 30 days after the commencement of the service (ch. 14, sec. 72).

¹ *Schonberger v. Culbertson* (1931), 247 N. Y. S. 180; 231 App. Div. 257.
² *Doyle v. Rochester Times-Union* (1931), 249 N. Y. S. 30.

25. Guardianship of Minor Children—Parents' Respective Rights.

A married woman is a joint guardian of her children with her husband with equal powers, rights, and duties in regard to them (ch. 14, sec. 81).¹

Any person in parental relation to a minor is charged with the responsibility of causing such minor to attend school, and to comply with other regulations of law governing the minor's school attendance.

A person in parental relation as used here includes the minor's father or mother, by birth or adoption, its legally appointed guardian, or its custodian (Supp., 1931-1935, ch. 15, sec. 627).

Where a minor for whom a general guardian of the property has not been appointed acquires real property, the guardianship of the property with the rights, powers, and duties of a *guardian in socage* belongs: (1) To the parents jointly, or, if they be separated or divorced, to the parent who has been given the custody of the minor by court decree, or if no decree has been made, to the parent having

the actual custody of the minor; (2) if one of the parents be dead, to the sole surviving parent (ch. 14, sec. 80).

¹ *In re Sisson* (1934), 152 Misc. 806, 812; 274 N. Y. S. 857.

26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.

Either parent, during the lifetime of both of them, may appoint by will the other as guardian of the person and property of their child during its minority.

The surviving parent of a minor child may appoint by deed or last will any person or persons as guardian of the child's person and tuition and may appoint a guardian or guardians of the person and of the property of the infant, not being limited to the appointment of the same person or persons in both capacities (Supp., 1931-1935, ch. 14, sec. 81).

27. Inheritance from an Intestate Child—Parents' Respective Rights.

See Number 15.

28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.

The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. The father is liable to pay the expenses of the mother's confinement and recovery, and is also liable to pay such expenses in connection with her pregnancy as the court in its discretion may deem proper.

If the father dies, an order of filiation or a judicially approved settlement made prior to his death is enforceable against his estate in such amount as the court may determine, having regard to the age of the child, the ability of the mother to support and educate it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any (ch. 14, sec. 120).

The paternity of the child may be established by filiation proceedings in the courts having jurisdiction of such cases, and action may be brought during the pregnancy of the mother¹ or within 2 years after the birth of the child (ch. 14, sec. 122) (Supp., 1936, ch. 14, sec. 122, subsec. 3).

An order of filiation is then made by the court, declaring paternity, specifying the sum to be paid weekly or otherwise for the support and education of the child until it reaches the age of 16, and making any other necessary provisions permitted by statute (ch. 14, sec. 127) (Supp., 1936, ch. 14, sec. 127, subsec. 3).

Bond may be required of either parent to secure compliance with the court order for support of the child, with penalties in default of such security, but it is provided that the statute requiring bond of the mother in cases of willful nonsupport does not relieve the father from his statutory liability for support and education of the child (ch. 14, secs. 129, 132).

¹ *Thomson v. Elliott* (1934), 273 N. Y. S. 898, 901.

29. Inheritance from Child Born Out of Wedlock—Mother's Right.

If a person born out of wedlock dies intestate, and leaves a mother, but no child or descendant and no surviving spouse, the mother takes the whole of the net estate, and is entitled to letters of administration in exclusion of all other persons. If the decedent leaves a surviving spouse, such spouse takes \$5,000 and one-half of the residue of the estate, while the mother takes the balance. If the mother is dead, the relatives of the deceased on the part of the mother inherit from the estate as if the deceased had been legitimate (ch. 13, sec. 83, subsec. 7).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The domicile of a married woman is established by the same facts and rules of law as that of any other person for the purpose of voting and holding office (ch. 14, sec. 61).

A woman citizen of this State married to and living with a resident of Pennsylvania in that State may still be a legal and voting resident of this State (Opinion of Attorney General, 1933, 48 St. Dept. Rep. 110).

But for other purposes, including the probate of her will, the woman upon marriage takes the domicile of her husband by operation of the common-law rule, where they are living together as man and wife. "Unity of person no longer exists but the husband is still the head of the family, the breadwinner in theory and duty if not in fact. He selects the place of abode of the family, and it is the duty of the wife to abide by his decision unless it is unsafe or imprudent for her to do so. * * * if * * * the husband chooses to live with the wife in her home, her status remains unchanged. It is his choice that governs, not hers, until he forfeits it."¹

For an interesting application of this rule, see *Perkins v. Guaranty Trust Co. of N. Y.* (1937), 274 N. Y. 250, 8 N. E. (2d) 849, reversing 248 App. Div. 712; 290 N. Y. S. 125.

A married woman residing in the State when she commences an action against her husband for divorce or separation is deemed a resident of the State even though her husband resides elsewhere (C. P. Act, sec. 1166).

¹ *Matter of Daggett* (1931), 255 N. Y. 243, 246.

31. Public Office—Eligibility of Women.

Women are equally eligible with men for election to public office (Const., art. 13) (ch. 4C, sec. 3).^{1 2}

Civil service examinations are open to both sexes (Const., art. 5, sec. 6).

¹ *Matter of Cavellier* (1936), 159 Misc. 212.

² *Matter of Burton v. Schmidt* (1926), 128 Misc. 270, 272.

32. Jury Service—Eligibility of Women.

Women are eligible for service on trial juries under the same qualifications that apply to men. But the woman called for jury service, though fully qualified, may claim exemption from service solely on the ground of sex (1937, ch. 513).

The term "trial jury" is equivalent to term "petit jury" (ch. 23, sec. 53-a).