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WOMEN'S BUREAU

FRIEDA S. MILLER, Director



# The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR

## COLORADO

*Individual State material, constituting part of a compilation to show the present legal status of women in the United States of America*



BULLETIN OF THE WOMEN'S BUREAU, No. 157-5 (Revised)

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1949

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.  
Price 10 cents

UNITED STATES DEPARTMENT OF LABOR

WOMEN'S BUREAU

The Legal Status of Women in the  
United States of America

January, 1948

REPORT FOR

**THE LEGAL STATUS OF WOMEN IN THE  
UNITED STATES OF AMERICA**

In response to continuing domestic and international needs, the Women's Bureau has prepared a revised edition of its 1938 report on the legal status of women in the United States of America.

The revised report is based on an examination of the Constitutions, official statutes, and significant 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 has been incorporated in the complete report.

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Bureau of the Women's Bureau, No. 125-7 (Revised)

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON, D. C.

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## LETTER OF TRANSMITTAL

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, April 21, 1949.*

SIR: I have the honor to transmit to you a revised report on the legal status of women in Colorado. This is one of 54 separate reports constituting a survey of the laws of the 48 States, the District of Columbia, the Territories of Alaska, Hawaii, and Puerto Rico, and the United States possessions, the Canal Zone and Virgin Islands.

The original report for each jurisdiction represents a thorough search of statutes and decisions of appellate courts construing its statutes or establishing its judicial policy. Revision covers important changes by legislative action.

The study was made by Sara Louise Buchanan, Attorney on the Women's Bureau staff, member of the bars of the Supreme Court of the United States and of the Mississippi Supreme Court. Valuable assistance was given in the preparation of the report by Mary Loretta Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, both of the Bureau staff.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

HON. MAURICE J. TOBIN,  
*Secretary of Labor.*

LETTER OF TRANSMITTAL

FRASER ST. LOUIS FED. RESERVE BANK

ST. LOUIS, MISSOURI

DEAR MR. [Name]

I have the honor to acknowledge the receipt of your letter of the 12th inst. regarding the proposed study of the law of the State of Missouri. I am pleased to inform you that the Committee on the Law of the State of Missouri, which is composed of the following members: [List of names], has accepted your proposal and has authorized me to advise you that the study will be conducted by the Missouri State Bar Association, which is a non-profit organization and has no financial interest in the study. The study will be conducted by the Missouri State Bar Association, which is a non-profit organization and has no financial interest in the study.

The study will be conducted by the Missouri State Bar Association, which is a non-profit organization and has no financial interest in the study. The study will be conducted by the Missouri State Bar Association, which is a non-profit organization and has no financial interest in the study. The study will be conducted by the Missouri State Bar Association, which is a non-profit organization and has no financial interest in the study.

Very truly yours,

[Signature]

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# THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

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## 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 common-law principles have not been enacted, the common law applies. In the century just past, many of the old common-law injustices to women have been removed by statute. 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 cooperative efforts of husband and wife after marriage.

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man, with the exception of the discrimination in some States which bars women from jury duty; or of distinctions, such as variance between men and women in the statutory age of majority or age of consent to marriage.

## COLORADO

### SOURCES

Constitution of Colorado.  
Colorado Statutes Annotated, 1935.  
Code of Civil Procedure, 1935.  
Session Laws, 1937, 1939, 1941, 1945, 1947.  
Colorado Reports.  
Colorado Court of Appeals Reports.  
Pacific Reporter.

### EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation Const., as (Const., art. 7, sec. 6), placed after the related subject matter.

Code section references are likewise in parentheses, thus (ch. 108, sec. 1). References to the Code of Civil Procedure are designated as (Code Civ. Proc., sec. 6).

Session laws are referred to by year of enactment and page number, as (1937, p. 545).

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."

# COLORADO

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

In relation to property rights all persons of the age of 21 years are considered of full age (ch. 176, sec. 82).

#### 2. Contractual Powers of Minors.

Except as to a narrowly limited class of contracts which are valid and binding on him, an infant's contracts are voidable, but not void. His executed contracts are binding until he shows by some act that he refuses to be bound longer by them, while his executory contracts are not binding until he has affirmed them after reaching his majority.<sup>1</sup>

When a minor is absent from home, not under care of a parent or legal protector, his contracts for necessities are binding, whether express or implied. This is true because if such contracts were subject to the general rule and he were deprived of credit, he might be unable to obtain food or clothing, though possessing the means by which he could, after a short time, pay for them. This exception is for the infant's benefit.<sup>2</sup>

No assignment of wages or salary by any minor is valid or enforceable (ch. 97, sec. 226).

As to capacity to make a will, see Number 14.

<sup>1</sup> *Sipes v. Sipes* (1930), 87 Colo. 301, 304; 287 Pac. 284.

<sup>2</sup> *Perkins v. Westcoat* (1893), 3 Colo. App. 338, 341; 33 Pac. 139.

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

##### Personal Property.

The wearing apparel of "every person" is exempt from seizure for debt (ch. 93, sec. 13). One bicycle and one sewing machine, when owned by "any citizen" of the State, are declared exempt (ch. 93, sec. 15). "Any person being the head of a family and residing with the same" is entitled to certain articles of personal property enumerated in the statute, including all wearing apparel of the debtor and his family, household furnishings, provisions, and fuel within statutory limits (ch. 93, sec. 14), together with "those articles of personal property commonly and necessarily used by the different classes of persons designated, in carrying on the various avocations by means of which they obtain sustenance for themselves and families."<sup>1</sup>

In construing the statutes emancipating married women, together with the exemption laws relating to personal property, the spirit of the judiciary is shown by these statements:

"\* \* \* It was the manifest intention of the legislature to remove every disability which coverture had formerly imposed upon her, so far as her own property and earnings are concerned. As to these the statute places her upon precisely the same footing with a *feme sole*. She may make contracts in reference to her property, carry on a trade or business, and perform labor and services, on her own account, sue and be sued in matters pertaining to her property or business as if she were sole; and her property and its proceeds may be taken in execution against her. In these matters she is, in the eye of the law, to all intents and purposes, sole. It certainly was not the intention of the legislature to place her in a worse position than if she were unmarried—to invite her to incur liabilities as if she were sole, but withhold from her the protection extended to unmarried persons. On the contrary, it is entirely clear to us that with reference to the matters specified it was the intention to clothe her with the full capacity and all the rights of a *feme sole*; and among these rights is the statutory one of the exemption of property from attachment and execution.

"\* \* \* every incident and privilege attaching to the dominion of property in the hands of any other person attaches to it in hers. The right to claim the benefit of the exemption law is both an incident and a privilege, and she is entitled to assert the right in the manner, and to the extent, provided in the case of any person not the head of a family."<sup>2</sup>

[The married woman contemplated in the foregoing is one living with her husband but doing business in her own name or dealing with her separate property.]

Exemption is available, without discrimination as to sex, to "any mechanic, miner, or other person not being the head of a family," covering the tools, implements, working animals, books, and stock in trade, not exceeding \$300 in value, used and kept for the purpose of carrying on the debtor's trade or business, as long as the person is a bona fide resident of the State (ch. 93, sec. 14, 3rd proviso).<sup>3</sup>

#### Wages.

Any debtor who is the head of a family, or the wife of the head of the family, and whose family resides in the State and is dependent wholly or partially upon the debtor's earnings for support, is entitled to hold exempt from levy under execution or attachment or garnishment 60 percent of the amount due him or her at the time levy is made; or if such wages or earnings do not exceed \$5 per week at the time of the levy, all of them are exempt (ch. 93, sec. 16).

So long as the wages or earnings are identifiable, even though deposited by the debtor in a bank, he or she is entitled to have them exempt according to the terms and provisions of the statutes.<sup>4</sup>

Pension money from the Federal Government received by any person, resident of the State, whether in actual possession of such pensioner, or deposited or loaned by him, is exempt, whether he is the head of a family or not (ch. 93, sec. 17).

When the head of a family dies, deserts, or ceases to reside with the family, the statutory exemption allowed to such head continues to the

family itself (ch. 93, sec. 19). In a case of desertion by the husband, a bankrupt, his wife as the remaining portion of the family was held entitled to the benefits of this statute, though generally a person residing alone is not a family.<sup>5</sup>

#### Homestead.

Every householder in the State who is the head of a family is entitled to a homestead exemption not exceeding \$2,000 in value (ch. 93, sec. 23) as long as the owner, or his or her family, occupies the property as such homestead (ch. 93, sec. 25). The homestead is not limited in area, whether urban or farm property, if the value does not exceed \$2,000 (ch. 93, sec. 27).

Formal entry of the homestead must be made by the owner with the clerk and recorder of the county in which the property is located, as prescribed by law. If either husband or wife owning the homestead fails to make the entry, the other spouse may do so (ch. 93, sec. 24).

The widow or surviving husband, or minor children, of any person who dies in possession of a homestead, is entitled to the homestead (ch. 93, sec. 26).

To convey or encumber a homestead, both husband and wife must join in the conveyance or encumbrance of their respective interests (ch. 40, sec. 119).

<sup>1</sup> *Watson v. Lederer* (1888), 11 Colo. 577, 581; 19 Pac. 602; 2 A. L. R. 831, note.

<sup>2</sup> *Scott v. Mills* (1895), 7 Colo. App. 155, 157; 42 Pac. 1021.

<sup>3</sup> *Martin v. Bond* (1890), 14 Colo. 466, 475; 24 Pac. 326; 9 A. L. R. 1261, note.

<sup>4</sup> *Rutter v. Shumway* (1891), 16 Colo. 95, 98; 26 Pac. 321.

<sup>5</sup> *In re Youngstrom* (1907), 153 Fed. 98, 105.

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

The property, real and personal, which any woman in the State may own at the time of her marriage, as well as the rents, issues, profits, and proceeds from it, continues to be her sole and separate property after her marriage, and is not subject to her husband's disposal nor liable for his debts (ch. 108, sec. 1).

#### 5. Contractual Powers of Married Women.

A woman may, while married, execute any bond, bill, promissory note, or other instrument in writing, for the direct payment of money (ch. 108, sec. 9). She may bargain, sell, and convey her real and personal property, and make any contract in reference to it as if unmarried (ch. 108, sec. 10).

Either husband or wife may convey property directly to the other.<sup>1</sup>

The wife may contract debts in her own name and upon her own credit; she may execute promissory notes, bonds, bills of exchange, and other instruments in writing, and may enter into any contract the same as if she were sole; and execution or other legal process under judgment against her may be enforced against her as if she were unmarried (ch. 108, sec. 11).

A married man who is the head of a family residing in the State can make no valid assignment of his wages or salary without the written consent of his wife in legal form (ch. 97, sec. 225).

No married person residing with wife or husband can make a valid assignment of his or her wages not already earned or of any sum

to become due the assigner after date of assignment, without the joinder and signature of the other spouse (ch. 97, sec. 233).

The court has said regarding the status of married women:

"\* \* \* By sundry legislative acts, dating from an early period, the disabilities of coverture have been gradually removed in Colorado, and these acts have been so liberally construed by the courts that controversies respecting the status of married women have practically disappeared from our jurisprudence."<sup>2</sup>

And again:

"\* \* \* \* In *Whyman v. Johnston*, 62 Colo. 461, 163 Pac. 76, we said that the fiction of one legal personality no longer exists. One has but to read the statutes of the State and the decisions of this court and of the Court of Appeals to realize that in the present state of the law the so-called unity of husband and wife is a mere figure of speech no longer having any practical significance."<sup>3</sup>

In all cases where an administrator of an estate is to be appointed, the husband or widow has preference for appointment, if willing and qualified to serve. But application for such appointment must be made within 20 days from the death of the intestate (ch. 176, sec. 74).

<sup>1</sup> *Wells v. Caywood* (1877), 3 Colo. 487, 494; 49 A. L. R. 122, note. (Hist.)

<sup>2</sup> *Williams v. Williams* (1894), 20 Colo. 51, 56; 37 Pac. 614.

<sup>3</sup> *Hedlund v. Hedlund* (1930), 87 Colo. 607, 609; 290 Pac. 285.

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

Any married woman may 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 are her sole and separate property, and may be used and invested by her in her own name. She may sue and be sued as if unmarried, in regard to her trade, business, labor, services, and earnings, and her property acquired through these channels and the proceeds thereof may be taken on any execution against her (ch. 108, sec. 3).

"The right of a married woman to the proceeds of her own labor, under this statute, cannot be doubted. The language of the act is clear and explicit, and the husband is deprived of all interest in the labor of his wife, rendered to third persons. \* \* \* The highest claim to the fruits of labor is vested in him who performs it, and none other need be asserted."<sup>1</sup>

But while these provisions, together with those empowering a married woman to sue and be sued as if single in all matters having relation to her property, person, or reputation, have relieved a married woman from many of the disabilities imposed under the common law, they have not abrogated all the common-law relations of husband and wife.<sup>2</sup>

<sup>1</sup> *Allen v. Eldridge* (1871), 1 Colo. 287, 289.

<sup>2</sup> *Denver & Rio Grande R. R. Co. v. Young* (1902), 30 Colo. 349, 351; 70 Pac. 688.

## 7. Liability of Married Woman for Family Necessaries.

Any married woman may contract debts in her own name and upon her own credit, and is liable under such contracts as if unmarried (ch. 108, sec. 11). The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation to such liability they may be sued jointly or separately (ch. 83, sec. 10). However, this joint liability

does not apply when the parties are not living together as a family in fact.<sup>1</sup>

A man who fails to support his wife and children (legitimate or illegitimate) as provided by law, except for physical disability or other good cause, may be convicted of felony (ch. 83, sec. 1).

<sup>1</sup> *Denver Dry Goods Co. v. Jester* (1915), 60 Colo. 290, 291; 152 Pac. 903; L. R. A. 1917A, 957.

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

No court decree or formal consent of the husband is made requisite to a married woman's engaging in a separate business. See Number 6. And it has been held that a married woman need not declare her intention to appropriate to her own use the proceeds of her labor in order to protect her right to them.<sup>1</sup>

<sup>1</sup> *Allen v. Eldridge* (1871), 1 Colo. 287, 289.

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

The property, real and personal, which any woman in this State may own at the time of her marriage, and the rents, issues, profits, and proceeds from it, and any property received by her by inheritance, under a will, or as a gift from any person except her husband, remain her separate property during the marriage, and such property is not subject to the husband's disposal nor liable for his debts. The statute includes as the wife's separate property certain classes of gifts from her husband, as jewelry, silver, tableware, watches, money, and wearing apparel (ch. 108, sec. 1).

The separate deed of the husband can convey no interest in the wife's lands (ch. 108, sec. 8).

Under the statute, the wife holds an absolute legal estate as free from the common-law rights of her husband as if she were unmarried; as to her separate estate she has no husband.<sup>1</sup>

The common-law estate of tenancy by entireties, covering conveyances to husband and wife, does not exist under Colorado statutes, which have changed the relative property rights of husband and wife.<sup>2</sup>

<sup>1</sup> *Palmer v. Hanna* (1881), 6 Colo. 55, 63.

<sup>2</sup> *Whyman v. Johnston* (1917), 62 Colo. 461, 463; 163 Pac. 76.

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

Under the statute, a married woman may carry on any trade or business and perform any labor or services on her sole and separate account, and the earnings from these sources are her individual property (ch. 108, sec. 3). However, while these provisions have relieved a married woman from many disabilities imposed under the common law, they have not abrogated all the common-law relations of husband and wife. She is still required to perform the usual and ordinary household duties. For services of this character she is not entitled to any monetary compensation from her husband. Her services on this account belong to him.<sup>1</sup>

The duties of the wife, as wife, form the consideration for the husband's liability for her maintenance.<sup>2</sup>

As to the husband, property procured by him with money he has earned after marriage is his separate property.<sup>3</sup>

The statute gives a married woman as her separate property that which she has at marriage, that which comes to her during marriage by inheritance or under will, or by gift as a general rule, and such as she acquires in her trade or business. But in the absence of evidence to show the separate ownership of the wife, the law presumes personal property and household articles to be owned by the husband where the husband and wife are living together in full enjoyment of marital rights, as there is nothing in the statute to change this common-law rule.<sup>4</sup>

<sup>1</sup> *Denver & Rio Grande R. R. Co. v. Young* (1902), 30 Colo. 349, 351; 70 Pac. 688.

<sup>2</sup> *Denver Dry Goods Co. v. Jester* (1915), 60 Colo. 290; 152 Pac. 903.

<sup>3</sup> *Hedlund v. Hedlund* (1930), 87 Colo. 607, 610; 290 Pac. 285.

<sup>4</sup> *Allen v. Eldridge* (1871), 1 Colo. 287, 290.

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

"Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; \* \* \* ." (Const., art. 2, sec 6). Any woman may, while married, sue and be sued, in all matters having relation to her property, person, or reputation, in the same manner as if she were sole (ch. 108, sec. 2). A married woman may sue and be sued in all matters, the same as if she were sole (Code Civ. Proc., sec. 6).

The court has said that this section of the Constitution guarantees the wife a remedy for every personal injury without making any exception as to the person inflicting the injury, who may be her husband or a third person, and that under the statutes quoted there is no exception as to the person she may sue.<sup>1</sup>

<sup>1</sup> *Rains v. Rains* (1935), 97 Colo. 19, 24; 46 Pac. (2d) 740.

### 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.

See Number 11.

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

Neither husband nor wife can be examined as a witness for or against the other without the consent of such other spouse. Neither can husband or wife, during the marriage or afterward, be examined without the consent of the other as to any communications made by one to the other during the marriage. However, this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other (ch. 177, sec. 9). In proceedings or prosecutions under the non-support statutes [ch. 83] the wife is made a competent witness against the husband, with or without his consent (ch. 83, sec. 5).

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

Every person of sound mind and memory may dispose of his or her estate of every kind, if 18 years of age (1947, p. 947). See Number 17.

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

Dower and tenancy by curtesy are abolished, and neither husband nor wife has any share in the estate of the other upon the death of one intestate except that provided by statute. Under the statute, the real and personal property of an intestate person who leaves a surviving husband or wife, descends and is distributed absolutely, after payment of debts, one-half to the husband or wife and the residue to any surviving children or their descendants; or if no children or their descendants survive, the living spouse takes the entire net estate absolutely (ch. 176, sec. 1).

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

Upon application of a widow, she is to be allowed from her husband's estate as her sole and separate property \$2,000 in cash, or at her election an equivalent value in real or personal property and cash, or portions of each class of property including cash, up to the aggregate value of \$2,000. If the decedent leaves a widow and a minor child or children, the stepchild or children of such widow, the allowance to the widow is limited to \$1,000 in value, the balance of \$1,000 of the statutory allowance being reserved to the exclusive benefit of such child or children, in the hands of their legal representative. If the decedent is a woman, who leaves a minor child or children whose male parent is not living or is divorced from the decedent or has deserted her and the child or children, such child or children are entitled to the same rights of allowance from her estate as a widow would be allowed, to be paid to their guardian or next friend; and such allowance from the widow's estate to the children is not subject to seizure for any debt or liability of the decedent (ch. 176, sec. 211).

The widow may have waived her right to the claim by express agreement.<sup>1 2</sup> The court observes in the *Brimble* case:

"\* \* \* we should remember that this alienation is not a mere peril against which the widow should be protected, but a privilege by which she may, in her husband's lifetime, secure something of value in exchange for what, unless she survives him, will never exist."

This allowance, after its award by the court to the widow, is subject to garnishment for her debts.<sup>3</sup>

As to the question of exemption of this allowance from garnishment on the ground of public policy, raised in this case, the court remarks that whatever the public policy may be, the express terms of the statute must control, and that the policy in such case is for the consideration of the legislature, not the courts. See Number 3.

Residence in the State is required of the widow or orphans who choose to avail themselves of the benefits of the statute [ch. 176, sec. 211], if the property is within the State; but the decedent need not be a resident at the time of death.<sup>4</sup>

This allowance to a widow is independent of her distributive share in her husband's estate.<sup>5</sup>

<sup>1</sup> *Vincent v. Martin* (1932), 91 Colo. 106, 108; 11 Pac. (2d) 1089.

<sup>2</sup> *Brimble v. Sickler* (1928), 83 Colo. 494, 497; 266 Pac. 497.

<sup>3</sup> *Isbell-Kent-Oakes Dry Goods Co. v. Larimer County Bank & Trust Co.* (1924), 75 Colo. 451, 453; 226 Pac. 293.

<sup>4</sup> *In re Madril's Estate* (1922), 71 Colo. 123; 204 Pac. 483.

<sup>5</sup> *Wilson v. Wilson* (1913), 55 Colo. 70, 72; 132 Pac. 67.

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

When either husband or wife wills away from the surviving spouse more than one-half of his or her property or estate, such surviving spouse has the right to elect whether to accept the provisions of the will or to take, notwithstanding the will, one-half of the property or estate both real and personal. But if he or she rejects the will, such election must be filed in written form in the county court where the will is probated, within 6 months from the time the will is admitted to probate (ch. 176, sec. 37).

Joint tenancies in personal property are not destroyed by will or any testamentary disposition (1941, p. 594).

## II.—MARRIAGE AND DIVORCE

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

All marriages wherein either party is under the age of 18 years are declared to be voidable (ch. 56, sec. 33).

If the male is under the age of 21 years or the female under the age of 18 years, a license to marry cannot be issued unless the written consent, verified under oath, of the parent or parents or guardian of the person under age, be filed as part of the application for the license. Such application must be under oath, also, and show actual ages of parties to the intended marriage, if either is under the age of consent (ch. 107, secs. 5-6). A judge of a court of record may order license to issue upon hearing of the facts, when license has been refused by the clerk or extraordinary circumstances are shown to exist which justify a waiver of statutory requirements in the court's opinion (ch. 107, sec. 10).

Marriage is prohibited between persons either of whom is under 16 years of age. Any such marriage is void unless approved by a court decree (1945, p. 478).

### 19. Validity of Common-Law Marriage.

The law of Colorado recognizes the validity of common-law marriages.<sup>1</sup>

A marriage simply by agreement of the parties, followed by cohabitation as husband and wife, and such other attendant circumstances as are necessary to constitute what is termed a common-law marriage, may be valid and binding.<sup>2</sup>

<sup>1</sup> *Clayton Coal Co. v. Industrial Com.* (1933), 93 Colo. 145; 25 Pac. (2d) 170.

<sup>2</sup> *Klipfel's Estate v. Klipfel* (1907), 41 Colo. 40, 46; 92 Pac. 26; 39 A. L. R. 538, note.

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

Each applicant for license to marry must file a physician's certifi-

cate with the licensing official, showing that in the opinion of the physician, the applicant either is not infected with syphilis and other venereal diseases, or is not in a stage of infection which may become communicable. The physician's certificate must be based upon a prescribed examination and standard serological test given within 30 days prior to the date license is issued.

No marriage may be performed unless the required certificate is attached to the marriage license.

Exception may be granted to these requirements only upon written consent of the State Board of Health, when it finds that license to marry has been refused but that it is advisable under existing circumstances to authorize the marriage, with temporary waiver of certificate during a treatment period (1939, p. 455).

## **21. Interstate Cooperation in Marriage Law Enforcement.**

All marriages contracted outside the State, which are valid by the laws of the country where contracted, are valid in Colorado courts, but nothing in this provision is to be construed so as to allow bigamy or polygamy in the State (ch. 107, sec. 4).

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

Marriages within prohibited degrees of kindred, that is, between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the one-half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. Also all marriages between Negroes or mulattoes, of either sex, and white persons, are declared to be absolutely void. The provisions of this statute are not to be so construed as to prevent the people living in that portion of the State acquired from Mexico from marrying according to the custom of that country (ch. 107, sec. 2).

All marriages wherein either party is under the age of 18 years are declared to be voidable (ch. 56, sec. 33).

Action for annulment may be maintained for non-age, provided the party seeking annulment is under the age of 19 years at the time suit is begun; also, "in such other cases as are recognized in equity" (ch. 56, sec. 34).

A cause of action for annulment may be combined with a cause of action for divorce, and upon the trial in such cause the court will award the relief to which the party or parties may be entitled (ch. 56, sec. 35). See Number 23.

## **23. Grounds for Divorce—Respective Availability to Spouses.**

Any marriage may be dissolved and a divorce granted for any one or more of the following named reasons, and for no other cause:

- (a) On complaint of the aggrieved spouse—
  - (1) Impotency at marriage, or occurring in consequence of immoral conduct committed after marriage.
  - (2) Living spouse, not divorced, at the time of the marriage.
  - (3) Adultery since marriage.
  - (4) Willful desertion without reasonable cause for at least 1 year immediately preceding divorce action.

(5) Extreme and repeated cruelty, whether mental suffering or bodily violence.

(6) Habitual drunkenness or drug addiction for at least 1 year immediately preceding action for divorce.

(7) Conviction of a felony in a court of record in any State after marriage (ch. 56, sec. 1).

(8) Incurable insanity, at a date at least 5 years prior to divorce action, without subsequently adjudged sanity, which cause must be strictly proved, as prescribed by statute. No husband who is granted a divorce on this ground is relieved thereby from his liability for support of such divorced spouse (ch. 56, sec. 2).

(b) On complaint of the wife—

(1) Husband's failure, though in good bodily health, to make reasonable provision for family support for at least 1 year immediately preceding the divorce action (ch. 56, sec. 1).

#### Grounds for Separate Maintenance.

An action may be maintained by a wife for separate maintenance (divorce from bed and board): (a) Upon any ground provided by law for divorce; (b) where she has been abandoned by the husband without just cause or excuse, and a reconciliation is not probable, and such relief appears just or proper; or (c) upon any ground generally recognized in equity (ch. 56, sec. 25).

#### Residence Required.

Except as to divorce actions on the grounds of adultery or extreme cruelty, whether the offense was committed within the State, no person may be granted a divorce unless he or she has been a bona fide resident and citizen of the State during the 1 year immediately preceding the filing of the suit (ch. 56, sec. 6).

In the 6-month period following the court's interlocutory decree providing for a divorce to be granted at the end of that period, the parties to the marriage are not divorced, and neither may contract another marriage (ch. 56, sec. 13).

#### When Woman May Sue Without Costs.

Any woman suing for a divorce, who shows the court that she is poor and unable to pay the expenses of the suit, is to be allowed by the court to prosecute her suit without costs and in such cases no fees are to be charged by the officers of the court (ch. 56, sec. 21).

### III.—PARENTS AND CHILDREN

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

Apparently the common-law rule is followed, and the father is entitled to receive the earnings of his minor child, unless he has released the child from this obligation to him. Note the application of this rule in *Pawnee Co. v. Powell* (1924), 76 Colo. 1, 7; 227 Pac. 836; 37 A. L. R. 6.

However, a father and mother or the sole surviving parent may maintain an action for the injury or death of a child; and where father

and mother maintain the action, each shall have an equal interest in the judgment (Code Civ. Proc., sec. 9).

See also Number 7 as to joint liability of parents for family necessities, and Number 26 as to married woman's right as joint guardian.

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

When a minor having a father living, or a mother and no father living, is entitled to or possessed of any estate, real or personal, the county court must notify the father or mother, as the case may be, to appear and show cause why a guardian of the minor's estate should not be appointed, unless such father or mother is the petitioner for the appointment of guardian. If sufficient reason be not shown, the court may appoint such father or mother, if he or she be a proper person; if not, then the court will appoint some other person, as provided by statute (ch. 176, sec. 83).

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

Every married woman is constituted and declared to be the joint guardian of her children with her husband, having equal powers, rights, and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born or of a child under the age of 21 years and unmarried, may dispose of the custody and tuition of such child during its minority, or for any less time, to any proper person, by deed or last will duly executed (ch. 76, sec. 3).

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

If a person dies intestate, leaving neither spouse nor descendants, his real and personal estate after payment of debts is taken by his father and mother share and share alike; if either parent be dead, the survivor takes the entire net estate (ch. 176, sec. 1).

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

The bastardy act provides for determining by jury trial the paternity of a child born out of wedlock, on complaint of the mother before the child is 12 months old. If the jury finds the complaint true, they may assess such damages against the adjudged father as they may think proper, directing payment annually or otherwise for any term of years not exceeding 18, and the court must render judgment accordingly. Payments are recoverable under execution, issued upon the judgment. A fair proportion of the sum so recovered must be appropriated to the support, maintenance, and education of the child. If the mother does not prove her case, she is taxed with the costs of the suit (ch. 20, secs. 1-6).

The nonsupport statute provides that any man who willfully neglects, fails, or refuses to provide reasonable support and maintenance for his illegitimate child or children under 16 years of age, or who willfully fails, refuses, or neglects to provide proper care, food, and

clothing in case of sickness for such illegitimate child or children, or the mother of his illegitimate child during childbirth and attendant illness, is deemed guilty of a felony, and upon conviction is subject to imprisonment in the penitentiary for 1 year or less, except it be shown that he is unable to furnish the required support, due to physical incapacity or other good cause (ch. 83, sec. 1).

Under this statute, an alleged father of an illegitimate child, in any case where the child is under 16 years of age, may be prosecuted for failure to support it, without having been adjudged, in some prior proceeding, to be such father.<sup>1</sup>

<sup>1</sup> *Wamsley v. People* (1918), 64 Colo. 521; 173 Pac. 425.

## **29. Inheritance From Child Born Out of Wedlock—Mother's Right.**

The property of any bastard or illegitimate person, dying intestate in the State and leaving an estate therein, passes to the surviving spouse and/or children as would the property of any other person. (See Number 15.) But if no spouse or children survive the illegitimate person, the mother takes one-half the estate and her children and their descendants take the other half (ch. 176, sec. 11).

## **B.—POLITICAL RIGHTS**

### **30. Domicile of Married Women.**

In the absence of affirmative evidence to the contrary, the wife's domicile is presumed to merge in that of the husband; she is presumed to live with her husband in his home.<sup>1</sup>

### **Voting Qualifications of Women.**

The election law provides that every female person shall be entitled to vote at all elections, in the same manner in all respects as male persons are or shall be entitled to vote by the constitution and laws of this State, and the same qualifications as to age, citizenship, and time of residence in the State, county, city, ward, and precinct, and all other qualifications required by law to entitle male persons to vote, shall be required to entitle female persons to vote (ch. 59, sec. 13).

### **Qualifications of Voter.**

Every person over 21 years of age, a citizen of the United States, who has resided in the State 1 year immediately preceding the election at which he offers to vote, in the county 90 days, in the city or town 30 days, and in the ward or precinct 10 days, is entitled to vote at all elections (1937, p. 545).

### **Distinction Between Residence and Domicile.**

The distinction between mere residence and domicile must be borne in mind. The former is used in law to denote that a person dwells in a given place; the latter is the legal home of a person, or that place where the law presumes that he has the intention of permanently residing, although he may be absent from it. When one has acquired a domicile, he must abandon it before he can gain another. To effect such a change, there must be both act and intention; in other words, there must be a severance from the old place, with the intention of uniting with the new one, and these must concur. A mere change of

residence is not sufficient to acquire a domicile elsewhere, unless it is intended to be permanent. The mere personal presence of a person otherwise qualified in a voting precinct for the period required by law, does not necessarily constitute such person an elector, unless he has moved in with the honest and settled intention of acquiring a new domicile.<sup>2</sup>

<sup>1</sup> *Colorado Fuel and Iron Co. v. Industrial Com.* (1933), 93 Colo. 188; 24 Pac. (2d) 1117.

<sup>2</sup> *Jain v. Bossen* (1900), 27 Colo. 423, 425, 426, 427; 62 Pac. 194.

**31. Public Office—Eligibility of Women.**

No person except a qualified elector shall be elected or appointed to any civil or military office in the State (Const., art. 7, sec. 6) (ch. 59, sec. 16). The early case of *Jeffries v. Harrington* (1887), 11 Colo. 191, 193, 17 Pac. 505, illustrates the liberal attitude of the State in the matter of women in appointive positions wherein the court said, ruling favorably on the appointment of a woman as deputy clerk of a county court—

“\* \* \* We do not think it was the intention of the framers of our constitution to declare such avenues of employment closed to women, and until some clear expression to that effect has been made by constitutional or legislative provision, the courts should not declare against the employment of women in such positions.”

**32. Jury Service—Eligibility of Women.**

Women are eligible for jury duty on the same terms as men. Exemption may be allowed to any person whose presence, in the opinion of the presiding judge, is necessary for the care of other persons, or on whom jury duty would cause undue hardship, or who has requested relief from duty for other good cause.

Exemption may be granted also to members of a religious sisterhood of any denomination who are following their profession (Const., art. II, sec. 23, as amended; 1945, pp. 424, 426).

