UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

WOMEN'S BUREAU

FRIEDA S. MILLER, Director

The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR

GEORGIA

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

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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.

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, November 23, 1948.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Georgia. 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.

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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 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.

GEORGIA

SOURCES

Constitution of Georgia.
Code of Georgia, 1933.
Session Laws, 1937, 1943, 1945, 1946, 1947.
Georgia Reports.
Georgia Appeals Reports.
Southeastern Reporter.
Federal Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbrevation Const., as (Const., art. 3, sec. 11), placed after the related subject matter.

Code section references are by section number, thus (sec. 53–502).

Session laws are referred to by year of enactment and page number, as (1937, p. 861).

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."

GEORGIA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of legal majority is 21 years. Until that age all persons are minors (secs. 74–104).

The minimum legal age for voting at any election by the people is 18 years (Const. amended, art. II, sec. 1, par. 2) (1945, p. 195).

2. Contractual Powers of Minors.

The deed of an infant is voidable at his pleasure on majority (sec. 29–106). Contracts of minors are voidable generally, except for necessaries as specified by law (sec. 20–201). The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors and, on account of that disability, are unable to exercise these rights as citizens (sec. 79–208).

A minor husband or widow of a deceased person, if entitled to a share of the decedent's estate, takes and holds such share without intervention of a guardian or other trustee (sec. 113–903, subsec. 2).

Infants under 14 years of age are considered wanting in that discretion necessary to make a will (sec. 113–203).

The minority of either party to marriage articles or a marriage contract does not invalidate it, provided such party is of lawful age to contract marriage (sec. 53–402). See Number 18.

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

Provision for exemption of realty or personalty, or both, to the value in the aggregate of $1,600, from levy and sale under any legal process except those authorized by the exemption law, is made in behalf of "every head of a family, or guardian, or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of dependent females of any age, who is not the head of a family" (Const., art. 9, sec. 1) (sec. 51–101).

The court has held that since the husband is the head of the family under the statute, a married woman living with her husband as a member of his family is not entitled to have a homestead set apart to her as the head of a family, out of her separate estate, notwithstanding the fact that the husband may be physically unable to work and possessed of no property nor means of support. But under the further

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provision of the constitution extending the exemption to any "person having the care and support of dependent females of any age, who is not the head of a family," there appears to be no reason why a married woman having a separate estate, and minor daughters dependent upon her for support, does not fall within both the spirit and letter of these words, notwithstanding the fact that she may be living with her husband.[1]

If husband and wife are separated, and the wife has charge of the minor children, she is the head of the family for purposes of this exemption, and as respects her separate property may have it set apart (sec. 51–701).

If the husband refuses to apply for the exemption out of his property, his wife, or any person acting as her next friend, may make the application, and it is as binding as if done by the husband (sec. 51–702).[2] In this connection the court has observed:

> The wife and family are the chief beneficiaries contemplated by the homestead and exemption laws. Grant that the legal estate does not vest in the wife, still she has such an interest in the use and enjoyment of the property as will entitle her to protect it from levy and sale by the interposition of a claim, in her own name, when it is under levy and about to be sold away from her by a creditor of the husband. Of course, she cannot do this until after the legal steps to set it apart and secure it as exempt property have been taken.[3]

Provision is made by law for setting apart another and a different character of homestead, which is colloquially termed the "pony homestead," and to make an exemption under this provision it is only necessary that the claimant prepare and record a schedule of the property to be exempted, and this seems to amount to no more than a claim that the property is exempt under the statute because of certain conditions which attach to the applicant.[4 5]

This exemption, also called the "statutory or short homestead," enumerates the following property: Fifty acres of land and five additional acres for each of his or her children under the age of 16 years, which shall include the dwelling house, if its value with improvements does not exceed $200; but such land cannot be within city, town, or village limits, nor include any cotton or wool factory, saw or grist mill, or other machinery propelled by water or steam, of value exceeding $200; nor may such land derive its chief value from other cause than its adaptation to agricultural purposes. Instead of such land, exemption may be allowed for real estate in a city, town, or village, not exceding $500 in value. This exemption and that of enumerated articles of personal property, including wearing apparel of the debtor and his family, apply only to a "debtor who is the head of a family," and "shall remain for the use and benefit of the family of the debtor." One family sewing machine is exempt whether the person owning it is the head of a family or not (sec. 51–1301).

> * * * the exemption here provided for cannot be taken in property belonging to one who is not the head of a family. * * * In the present case, a wife, living with her husband, attempted to take "the pony homestead" in property which belonged to herself, "for the benefit of herself and family, consisting of her husband and seven minor children." A married woman living with her husband is not the head of a family. Where a husband and wife are living together, the law recognizes the husband as the head of the family. * * * The homestead set up by the plaintiffs in this case is, therefore, a mere nullity.[6]

The two forms of homestead exemption are optional to heads of families. Either may be selected, but not both (sec. 51–906).[7]

Any debtor may, except as to wearing apparel and $300 worth of household and kitchen furniture and provisions, waive or renounce his right to the benefit of these exemptions, in writing, either in the contract of indebtedness or in a separate paper (sec. 51–1101). The debtor and his wife, if any, select the household and kitchen furniture and provisions not exceeding $300 in value which are free from levy and sale, and file a schedule of the items and values with the ordinary of their county (sec. 51–1103). The exemptions are voluntary, not compulsory, and the owner, though entitled to the right, may waive it.[8] For this reason, it is held that a waiver on the part of the husband as to his homestead in any particular portion of his property binds the wife and excludes her from the benefit of a homestead in that property as effectually as though she had joined in the waiver. The fact that the wife's application for a homestead may be pending at the time the exemption is waived does not change the principle. The husband has the right, after her application has been made, to prevent her acquiring the homestead by filing his objection to the proceeding. So he likewise may defeat her right to this exemption at any time before it is assigned to her by waiving it in favor of a debt.[9]

See also last paragraph in Number 16.

[1] *Johnson* v. *Little* (1893), 90 Ga. 781, 783; 17 S. E. 294.
[2] *Hughes* v. *Purcell* (1910), 135 Ga. 174; 68 S. E. 1111.
[3] *Connally* v. *Hardwick* (1878), 61 Ga. 501, 505.
[4] *Marcrum* v. *Washington* (1899), 109 Ga. 296, 299; 34 S. E. 585.
[5] *Kimsey* v. *Rogers* (1928), 166 Ga. 176, 179; 142 S. E. 667.
[6] *Bennett* v. *Trust Co. of Georgia* (1899), 106 Ga. 578, 581; 32 S. E. 625.
[7] *Wilbanks* v. *Wardlaw* (1934), 50 App. 495; 178 S. E. 466.
[8] *Bowen* v. *Bowen* (1875), 55 Ga. 182.
[9] *Jackson* v. *Parrott* (1881), 67 Ga. 210.

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

All the property of any character that a woman owns at the time of her marriage remains her property after the marriage (sec. 53–502). See Number 9.

5. Contractual Powers of Married Women.

As to her separate estate (see definition in Number 9), the statute provides that a wife may contract as if unmarried, with certain exceptions[1]: First, if she entered into a marriage settlement with regard to her property, every restriction upon her power made in such settlement must be complied with; second, she may not bind her separate estate by any contract of suretyship nor by any assumption of the debts of her husband; third, any sale of her separate estate, made to a creditor of her husband in extinguishment of his debts, is absolutely void (sec. 53–503). The term "absolutely void" is interpreted to mean that such contracts are not illegal, but merely void or voidable at the wife's election as against the original payee, and the legislative purpose is held to be only to render such contracts unenforceable.[2]

If the debt is the husband's, the wife cannot assume its payment, either by promising to pay the debt as a surety, or by pledging her property to pay it. The spirit and purpose of the statute is to prevent the appropriation of the wife's property to the payment of a secondary or collateral liability.[3]

But under the married woman's statute a wife is free to enter into a contract voluntarily upon her own responsibility to obtain money, either by borrowing, or by selling property, and "it makes not a particle of difference that the party with whom she contracts may know she intends to use the money she receives for her husband's benefit" [4]; but the husband's creditor may not make the loan to the wife.[5]

A sale and conveyance of her land or other separate estate by a wife to her husband or to her trustee is not only voidable but void, unless the transfer has been allowed by an order of the superior court of the county of her domicile (sec. 53–504).[6]

A married woman may make contracts with other persons but, when a transaction between husband and wife is attacked for fraud by the creditors of either, the husband and wife must show that the transaction was fair in order to sustain it (sec. 53–505).

She make a gift of her separate estate to her husband [7]; however, if attacked, it must be clearly proved to have been a gift (sec. 53–506).

The wife may act as attorney and agent for the husband, but generally proof of such power must be made as in other cases (sec. 53–509). Also, the husband may be the agent of the wife [8]; generally, he may contract with her.[9]

A wife may enter into a partnership with her husband or with another and, in so doing, she becomes liable for partnership debts, as governed by statute which provides that, as to third persons, all members of the firm are liable not only to the extent of their interests in the partnership property but also to the whole extent of their separate properties (sec. 75–103).[10] [11]

A married woman may enter into a binding contract to acquire property whether or not she has a separate estate.[12]

Both spouses must join in any assignment of salary or wages by either of them, under the provisions of the Small Loan Act (sec. 25–316).

Any married woman may act as executrix or administratrix upon any estate by complying with all the requirements of the law for other like representatives of estates; and no letters testamentary or of administration granted to a feme sole shall abate in consequence of her marriage after the granting of such letters testamentary or of administration (sec. 113–1204). For Guardianship, see Number 25.

A mother or, if no mother, a father may recover for the homicide of a child, upon whom she or he is dependent, or who contributes to her or his support, unless the child leaves a wife, husband, or child (sec. 105–1307).

It is held that dependence upon the child for support must be shown, as well as the child's contribution, to establish the parent's right to recover under this statute.[13]

[1] *McCrory* v. *Grandy* (1893), 92 Ga. 319, 327; 18 S. E. 65.
[2] *Colquitt* v. *Dye* (1922), 29 App. 247; 114 S. E. 643.
[3] *Gross* v. *Whitely* (1907), 128 Ga. 79, 82; 57 S. E. 94.
[4] *Nelms* v. *Keller* (1898), 103 Ga. 745, 746; 30 S. E. 572.
[5] *Edwards* v. *Warnell* (1933), 177 Ga. 469; 170 S. E. 365.
[6] *Glover* v. *Summerour* (1928), 165 Ga. 513; 141 S. E. 211.
[7] *Rich* v. *Rich* (1917), 147 Ga. 488; 94 S. E. 566.
[8] *Hutcheson* v. *May* (1930), 40 App. 746; 151 S. E. 657.
[9] *Bacon* v. *Bacon* (1925), 161 Ga. 978, 988; 133 S. E. 512.
[10] *Burney* v. *Savannah Grocery Co.* (1896), 98 Ga. 711, 713; 25 S. E. 915; 58 A S. R. 342.
[11] *Redd* v. *Latham* (1924), 32 App. 214, 219; 123 S. E. 175.
[12] *Hays* v. *Jordan* (1890), 85 Ga. 741, 746.
[13] *Augusta Southern R. R. Co.* v. *McDade* (1898), 105 Ga. 134, 139; 31 S. E. 420.

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

The law provides that all property given to, inherited, or acquired by the wife during coverture vests in and belongs to the wife, and is not liable for the payment of any debt, default, or contract of the husband (Const., art. 3, sec. 11) (sec. 53–502).

A husband who is living with his wife is not entitled to receive her salary or wages, and may not take them except by her consent (1943 Laws, Act 243, p. 316).

There is no express provision of the statute empowering a married woman living with her husband to sue for in her own name, and recover in her own right, her earnings outside her home. But there are court decisions which uphold her right to do so, (1) when the earnings consist of salary or wages [1] and (2) when the earnings are from other sources and the husband has given his consent for such earnings to be her separate property.[2] [3]

[1] *Martin* v. *Gurley* (1946), 201 Ga. 493; 39 S. E. (2d) 878.
[2] *Eichberg* v. *Bandman* (1885), 74 Ga. 834.
[3] *Meriwether* v. *Smith* (1871), 44 Ga. 541.

7. Liability of Married Woman for Family Necessaries.

The husband is bound to support and maintain his wife (sec. 53–510). However, the wife may by express contract become individually liable for necessaries purchased by her. "The rule is that, in order to hold the wife individually liable for necessaries purchased by her for the use of herself and family, it must be shown that it was the intention and agreement of the parties to the contract of sale that she was to be so bound." [1] [2]

When the wife is separated from the husband, he is bound for necessaries furnished her, unless she is living in adultery or has abandoned him without sufficient provocation. In the latter case, he may give notice and be relieved of liability for necessaries furnished to her. Such notice does not relieve him if the separation is because of his misconduct (sec. 53–508).

[1] *Mather-Groover Co.* v. *Roberts* (1936), 54 App. 398; 187 S. E. 913.
[2] *Wright* v. *Universal Garage Co.* (1936), 54 App. 323; 187 S. E. 718.

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

There is no statute requiring a formal court proceeding in order to permit a married woman to conduct a separate business of her own. But it is held that the consent of the husband, either express or implied, to his wife's engaging in an independent business is essential if she is to retain as her separate estate her earnings from the business,[1] [2] or from other sources than "salary and wages." [3]

[1] *Gresham* v. *Stewart* (1923), 31 App. 25, 27; 119 S. E. 445.
[2] *Ocean Steamship Co. of Savannah* v. *Bassett* (1925), 33 App. 696, 699; 127 S. E. 671.
[3] *Martin* v. *Gurley* (1946), 201 Ga. 493; 39 S. E. (2d) 878.

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

The wife's separate estate consists of all the property owned by her at the time of her marriage, whether real, personal, or rights of action,

as well as all property given to, inherited, or acquired by her during marriage. Such property is not liable for the payment of any debt, default, or contract of the husband (Const., art. 4, sec. 5) (sec. 53–502).[1] The husband has no authority over her separate estate, except as to her earnings other than salary and wages, if he has not consented for these to belong to her. See Number 6 and authorities cited.

Possession of land by the husband with the wife is presumptively his possession, but the presumption may be rebutted (sec. 85–408).

Regardless of who owns the property occupied by husband and wife as a home, he is in law the head of the family, responsible for the necessities of the family, and authorized to contract to board another in such home; and though the property may belong to his wife, he may, under certain circumstances, make contracts in his individual right and capacity for others to work the property.[2]

There are no joint tenancies or estates by the entirety, but any joint ownership is declared to be a tenancy in common (sec. 85–1002).

[1] *Huff* v. *Wright* (1869), 39 Ga. 41, 43.
[2] *Childs* v. *Charles* (1933), 46 App. 648; 650; 168 S. E. 914.

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

The property acquired after marriage by the joint efforts of husband and wife belongs to the husband by rule of common law, unless other arrangement is made by private contract, such as joint deeds or joint bank accounts.

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

If a tort be committed upon the person or reputation of the wife, the husband or the wife may recover damages. If the spouses are living separate, the wife may sue and recover for such injuries (sec. 53–511).

A married woman, living separate from her husband, can sue for damages against a third person for the alienation of her husband's affections and for loss of her consortium, which includes "society, affections, and aid."[1]

Adultery or criminal conversation with a wife gives a right of action to the husband against the intruder (sec. 105–1203). No similar right of action is accorded the wife against a woman committing such offenses with her husband.

A husband has a right of action against another for abducting or harboring his wife (sec. 105–1202). No corresponding right is accorded to the wife.

In the absence of an agreement with her husband that she is to retain her personal earnings, a wife is not entitled to recover on account of loss of earnings resulting from an injury to her.[2]

[1] *Sessions* v. *Parker* (1932), 174 Ga. 296, 308; 162 S. E. 790.
[2] *Mitchell* v. *Mullen* (1932), 45 App. 285; 164 S. E. 278.

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.

The common-law rule is unchanged that neither spouse has a civil right of action against the other for a wrong or injury committed upon the person of one by the other.

But the rule has been changed in respect to property rights, and the wife may be sued by the husband in a bail-trover proceeding for recovery of his personal property converted by her.[1]

[1] *Eddleman* v. *Eddleman* (1937), 183 Ga. 766, 771; 189 S. E. 833.

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

Husband and wife are alike incompetent witnesses for or against each other in any criminal proceeding, except that either is competent but cannot be compelled to testify against the other upon the trial for any criminal offense committed or attempted upon the person of either by the other. The wife is competent to testify for or against the husband when he has willfully and voluntarily abandoned his child (secs. 38–1604, 74–9902). When a man whips, beats, or otherwise cruelly maltreats his wife, she is a competent witness against him (sec. 26–1410).

In civil actions, generally, husband and wife are competent witnesses (secs. 79–205 to 79–207).

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

Any person, 14 years or over, of sound mind and not under legal disability, may make a will (sec. 113–201).

A married woman may by will dispose of her real or personal estate without her husband's consent.[1] [2]

[1] *Urquhart* v. *Oliver* (1876), 56 Ga. 344. (Hist.)
[2] *Ferrell* v. *Gill* (1908), 130 Ga. 534, 536; 61 S. E. 131.

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

Upon the death of one spouse, the survivor inherits from the estate as follows:

Real Estate.

A surviving husband takes an equal portion of the wife's estate with the children of the decedent, if any. If there are no children or descendants, the husband takes the entire estate, without administration, after payment of the wife's individual debts (sec. 113–902).

If the husband dies, leaving descendants, the wife is entitled to a child's part, unless the shares exceed five in number, in which case the wife takes one-fifth part of the estate. However, if the wife elects to take her dower she has no other interest in the real property (sec. 113–903, subsec. 3). On the death of the husband without lineal descendants the wife is his sole heir and, upon payment of his debts, may take the estate without administration (sec. 113–903, subsec. 1).

Personal Estate.

After payment of administration expenses and the debts of the decedent, the balance of the estate, both real and personal, is subject to distribution among the heirs at law of the deceased, according to the rules prescribed by statute (sec. 113–1001).

Life Interests.

As to the husband, there is no tenancy by curtesy in Georgia (sec. 85–608).

As to the widow, provision is made for dower, if she elects to take it. This is an estate for life in one-third of the lands, according to valuation, including the dwelling house (which is not to be valued unless in a town or city), of which the husband was seized and possessed at the time of his death, or to which the husband obtained title in right of his wife (sec. 31–101). If the husband by will gives to his wife an interest in his lands, her election of dower bars her of that devise, but does not deprive her of any interest in the personalty bequeathed to her in the will, unless it is expressed to be in lieu of dower (sec. 31–103).

In lieu of dower, the widow, with the assent of the estate's representative, may elect a life estate in one-third part of the proceeds of the sales of the land, or any distinct tract or tracts of land (sec. 31–107). Or, with the assent of the estate's representative and the approval of the ordinary, the widow may elect in lieu of her dower, an amount in money to belong absolutely to her, to be estimated and determined by the commissioners appointed to assign dower. The amount so awarded is to be paid in preference to all other claims out of the proceeds of the sale of the land (sec. 31–108).

Dower cannot be defeated by any lien created by the husband in his lifetime, even though assented to by the wife (sec. 31–109).

The dower right may be barred by: (1) Premarital agreements; (2) provision of deed or will, clearly intended to be in lieu of dower, and accepted after the husband's death by the wife in lieu of dower; (3) election of the widow, within 1 year from the grant of letters testamentary or of administration on the husband's estate, to take a child's part of the real estate in lieu of dower; (4) failure to apply for the dower for 7 years from the death of the husband; (5) adultery of the wife unpardoned by the husband (sec. 31–110); or (6) failure to apply for dower prior to a sale made more than 1 year after husband's death by administrator or executor under authority of the court or under power granted in the will. Such sale bars dower only as to the land sold. The widow must have been notified of the sale (1937, p. 450).

An election by the widow to take a child's part of the realty, in ignorance of the condition of the estate, or of any fact material to her interest, ordinarily does not bar her right of dower (sec. 31–104).

The right of dower does not attach except to property of which the husband is seized and possessed at the time of his death (sec. 31–101). Consequently, the husband may dispose of his land during his lifetime by absolute sale or gift, without the consent of the wife, even though his intent be to defeat her dower right upon his death.[1] [2]

[1] *Flowers* v. *Flowers* (1892), 89 Ga. 632, 635; 15 S. E. 834; 18 L. R. A. 75.
[2] *Harber* v. *Harber* (1921), 152 Ga. 98; 108 S. E. 520.

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

If a husband dies without descendants, his widow after payment of his debts, if any, may take possession of his estate without administration, since she is his sole heir (sec. 113–903, subsec. 1).

The widow is entitled to the possession of the dwelling house from the death of her husband, and before dower is assigned, and also of the furniture, until her portion is set apart by the appraisers as provided by law (sec. 31–102).

One of the necessary expenses of administration, and to be preferred before all other debts generally, is support of the widow or the widow and minor child or children. This item is chargeable whether the husband dies testate or intestate or the estate is solvent or insolvent. Provision for 1 year's support, dating from the beginning of administration, to be not less than $100 in any event, or the whole of the estate if it does not exceed $500 in value, is to be made by appraisers duly appointed upon the widow's application. A sufficient portion of the household furniture is to be set apart also (sec. 113–1002).

When an estate is to be kept together for a longer time than 12 months, and there are no debts to be paid, additional support may be allowed (sec. 113–1004).

Property so set apart for the benefit of the widow alone is owned by her in fee thereafter, without restriction as to use, incumbrance, or disposition. Where it is set apart for the joint benefit of the widow and her minor child or children, a conveyance or incumbrance of all or any part of it by the widow, conveys or incumbers the widow's interest and is binding and conclusive upon her (1937, p. 861).

If the husband makes provision by will in lieu of the year's support, the widow may elect which she will take (sec. 113–1007).

The statutory exemptions of homestead and personalty to the family of an insolvent debtor extend, on his death, to his widow or children, if he dies intestate (sec. 51–1504). See Number 3.

Wages, not exceeding in amount $300, due a deceased employee by a railroad or other corporation in the State may be paid to the surviving widow. Such wages up to $300 are exempt from garnishment proceedings (secs. 66–103, 66–104).

Bank deposits not exceeding $600 in amount may be paid to a surviving spouse without formal administration proceedings (1943, p. 253).

Unpaid wages due an employee who is found to be insane may be paid to his wife, if she is living with him at the time he is adjudged insane (1947, p. 306).

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

Each spouse has the right to elect whether to accept the provisions of the will of the one deceased or to take instead the provision made for him or her by the statute (secs. 37–501, 113–819).

II.—MARRIAGE AND DIVORCE

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

To be able to contract marriage, a male must be at least 17 years of age, and a female at least 14 years (sec. 53–102).

If upon inquiry by the ordinary, there be any grounds of suspicion that the female is under the age of 18 years, license to marry must not be issued until the written consent of the parents or guardian controlling the minor is placed on file (sec. 53–207). In cases where the parties applying have not reached the age of 21 years, notice must be posted in the office of the ordinary, giving the names and residences of the applicants, unless the parents or guardian of the female personally appear before the ordinary and give written consent to the marriage (sec. 53–204). If notice be posted, no license may issue earlier than 5 days following the date of application, within which time objections to the marriage may be entered (sec. 53–205).

If the ordinary does not know personally that both parties are 21 years of age or over, he must require documentary proof to establish this fact (sec. 53–206).

19. Validity of Common-Law Marriage.

By the common law, and the law of the State, a mutual agreement to be husband and wife by parties able to contract, followed by cohabitation, is recognized as a valid marriage sec. 53–101).[1 2]

[1] *Dale* v. *State* (1891), 88 Ga. 552, 556; 15 S. E. 287.
[2] *Drawdy* v. *Hesters* (1908), 130 Ga. 161, 168; 60 S. E. 451.

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

No health certificate is required of applicants for license to marry.

21. Interstate Cooperation in Marriage Law Enforcement.

All marriages solemnized in another State by parties intending at the time to reside in the State of Georgia have the same legal consequences and effect as if solemnized within the State of Georgia. Parties residing in Georgia may not evade any of the provisions of its laws by going into another State for the solemnization of the marriage ceremony (sec. 53–214). The law of the place of contract controls generally, unless the enforcement of it involves toleration of anything immoral, contrary to general policy, or violative of the conscience of the State.[1]

[1] *Eubanks* v. *Banks* (1866), 34 Ga. 407, 416.

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

Marriages of persons unable to contract, or unwilling to contract, or fraudulently induced to contract, are declared void, except in the latter two cases when the marriage is ratified by subsequent voluntary consent and cohabitation (sec. 53–104). To constitute an actual contract of marriage, the parties must consent to it voluntarily, and without any fraud practiced upon either. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent, is

held a fraud (sec. 53–103). Non-age, unsound mind, undissolved prior marriage, forbidden degree of kinship, or impotency renders a person incapable to contract marriage, and the marriage is therefore void (secs. 53–101, 53–102). Prohibited interracial marriages are void (sec. 53–106).

[It is stated by a commentator resident in Georgia that: "Although the cases and the code speak of annulment, to date there has been no decision by the Supreme Court of Georgia stating that an annulment will be allowed. The practice, however, has been for the superior courts to grant them and, to date, no one has bothered to appeal a decision."]

23. Grounds for Divorce—Respective Availability to Spouses.

Total divorces may be granted only by the superior court. (Const., art. 6, sec. 4, par. 1.) The judge will hear and determine the case, unless an issuable defense is filed, or a proper request made for a trial by jury (1946, p. 90).

A total divorce may be granted on any of the following grounds: (1) Prohibited degree of kinship; (2) mental incapacity at marriage; (3) impotency at marriage; (4) force, duress, menaces, or fraud in obtaining marriage; (5) wife's pregnancy at marriage, unknown to the husband; (6) adultery of either party after marriage; (7) willful and continued desertion by either party for the term of 1 year; (8) conviction of either party for an offense involving moral turpitude followed by penitentiary imprisonment for 2 years or more; (9) habitual intoxication; (10) cruel treatment, which shall consist of the willful infliction of pain, bodily or mental, upon the complaining party, such as reasonably justifies apprehension of danger to life, limb or health.

Final judgment rendered by the court will grant immediate total divorce if justified by the evidence, and will authorize right of remarriage to the plaintiff, also in the court's discretion, to the defendant. The decree may restore the wife's maiden name, if requested; also award custody of children as well as fix alimony and support for them and the wife (1946, p. 90).

A total divorce annuls the marriage from the time the verdict is rendered (sec. 30–119).

III.—PARENTS AND CHILDREN

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

Until majority, a child remains under the control of the father, who is entitled to his services and the proceeds of his labor unless the father has surrendered or forfeited his parental rights as prescribed by statute (sec. 74–108). The mother becomes entitled to the services and earnings of the child upon the death of the father,[1] or his abandonment of the family.[2]

The father is charged by statute with the maintenance, protection, and education of the child until its majority (sec. 74–105).

[1] *Harris* v. *Johnson* (1896), 98 Ga. 434; 25 S. E. 525.
[2] *Coleman* v. *Dublin Coca-Cola Bottling Co.* (1933), 47 App. 369, 371; 170 S. E. 549.

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

Guardians of minors may be either (1) natural guardians; (2) testamentary guardians; (3) guardians of person and property, or either (sec. 49–101).

(1) The father, if living, is the natural guardian; if dead, the mother is the natural guardian (sec. 49–102). A natural guardian owes the child support, education, and maintenance and, in return, is entitled to the child's services and earnings during its minority, by common-law rule.

(2) Every parent may appoint by will a guardian for the property of his child. Either parent who survives the other may by will appoint a guardian for the person of his minor child (1943, p. 396).

(3) The county ordinary has the power of appointing a guardian of the person and property, or either, of a minor who has no guardian (sec. 49–105). A married woman may be appointed guardian of the person or property, or both, of any minor, whether her own child, or that of another, by complying with all the provisions required by law of other guardians in the State (sec. 49–108).

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

For the rights of parents to appoint testamentary guardians, see Number 25.

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

The father and mother of a deceased intestate child inherit his estate equally with his brothers and sisters, and stand in the same degree (sec. 113–903, subsec. 6).

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

The father of an illegitimate child is bound to maintain him. He may voluntarily discharge this duty, but if he fails or refuses to do it the law will compel him (sec. 74–202).

The paternity of a child born out of wedlock may be adjudged by a statutory court proceeding, and the father is then required to give security for the maintenance and education of the child until it arrives at the age of 14 years, and also for the mother's lying-in expenses. Failure to give bond subjects the father to grand-jury indictment (secs. 74–301 to 74–303).

If the mother refuses to disclose under oath the father's identity, she is charged under bond in the sum of $750 for the child's support, if it is likely to become a charge on the county. If she refuses either to give bond or to disclose the father, she is subject to imprisonment not exceeding 3 months (secs. 74–301, 74–306).

The mother is entitled to possession of the child unless the father legitimates it according to law. As the mother is the only recognized parent, she is entitled to exercise all the paternal power (sec. 74–203). See Numbers 24, 25, and 26.

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

When a child born out of wedlock dies intestate leaving no issue or widow, his mother, brothers, and sisters inherit his estate equally (sec. 113–904).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The domicile of a married woman is that of her husband except in two cases: (1) Of voluntary separation and living apart, or (2) of a pending application for divorce. In either case her domicile is determined as if she were unmarried (sec. 79–403).

31. Public Office—Eligibility of Women.

Women are entitled to hold public office on the same terms as men (Const., art. 2, sec. 1, as modified by Amendment XIX to the Constitution of the United States) (secs. 79–205 to 79–207). A woman may be appointed as State librarian (sec. 101–101), and the competitive examinations for assistant physicians at the State hospital are open alike to women and men (sec. 35–215).

32. Jury Service—Eligibility of Women.

Women are not eligible for jury service (sec. 79–207). However, the General Assembly is empowered "to require jury service of women also", under such regulations as it may prescribe (Const., art VI, sec. 16, par. 2).

Special Topics.

An unmarried mother shall not be discriminated against in an action for damages because of her child's injury or death, whether she sues in her own right or as guardian, executor, or administrator (1943, p. 538).