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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

MONTANA

*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. 157-25 (Revised)

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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 of the United States Department of Labor 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, May 5, 1949.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Montana. This is 1 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.

LETTERS OF TRANSMITTAL

United States Department of Labor

Washington, D. C.

February 10, 1910

Sir: I have the honor to transmit to you the report of the
legal status of women in Montana, prepared by the
Commissioner of the Bureau of Labor Statistics, and
the Bureau of Census, Department of the Interior, and the
United States Geological Survey, Department of the Interior.

The original report has been prepared by the
Bureau of Labor Statistics, Department of the Interior,
and the Bureau of Census, Department of the Interior,
and is being transmitted to you for your information.

The study was made by Miss Louise Dickinson Brown, of the
Bureau of Labor Statistics, Department of the Interior,
and of the Bureau of Census, Department of the Interior,
and is being transmitted to you for your information.

Very respectfully,
Commissioner of Labor

Alfred S. Murn in Reply

Very respectfully,
Theodore Tilton

Secretary of Labor

Washington, D. C.

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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 bar 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.

MONTANA

SOURCES

Constitution of Montana.
Revised Codes of Montana, 1935.
Session Laws, 1937, 1939, 1941, 1945, 1947.
Montana Reports.
Pacific Reporter.

EXPLANATORY NOTE

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

Code section references are likewise in parentheses, thus (sec. 5673).

Session laws are referred to by year of enactment and page number, as (1937, p. 518).

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."

MONTANA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of majority is 21 years for males, 18 for females (sec. 5673).

2. Contractual Powers of Minors.

A minor must pay the reasonable value of necessaries for himself or his family, contracted for by him when not under the care of a parent or guardian able to provide them (sec. 5681).

A minor may make a conveyance or other contract, but such conveyance or contract is subject to his or her disaffirmance either before or on attaining majority (sec. 5679). A married minor woman may not execute a power to convey her separate property (sec. 6801).

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

Personal Property.

A bona fide resident of the State who is a married person or the head of a family is entitled to have exempt from execution (except for purchase price or a mortgage lien) all wearing apparel of the debtor and family, household furnishings, furniture, provisions, livestock and feed, as limited by statute (sec. 9427). Such persons are allowed also the equipment essential to the earning of a livelihood, as enumerated in the statute; proceeds of insurance on the debtor's life, if the annual premiums paid do not exceed \$500 (secs. 9428, 9430.2); the debtor's earnings for personal services rendered at any time within 45 days next preceding the levy of execution when satisfactorily shown that such earnings are necessary for his family, except that only one-half of such earnings are exempt as to any debts incurred for family necessaries (sec. 9429). If any debt sued on is \$10 or less, no process may issue against the wages or earnings of a debtor for his personal services rendered at any time within 30 days next preceding the commencement of the action, and such wages and earnings are exempt from attachment (sec. 9429.1).

Unmarried persons not heads of families are not entitled to any of the exemptions allowed under section 9427, except personal wearing apparel (sec. 9427), except that an unmarried man or woman over 60 years of age has the same exemptions that are granted to the head of a family (sec. 9430.1).

Homestead.

The husband or other head of a family, or the wife where the husband has not made selection, is entitled to declare a homestead, as provided by law (secs. 6970, 6971). "Head of a family" includes the husband, or the wife where the husband fails to join in the declaration; every person 60 years of age or over actually residing on the premises; or every person who has residing on the premises with him or her, and under his or her care and maintenance, any of the dependent relatives enumerated in the statute (sec. 6969). This rule applies to personal exemptions also.¹

A homestead may be any quantity of land not exceeding 320 acres used for agricultural purposes, and the dwelling-house and appurtenances, not included in a town, city, or village; or if within a town, city, or village, it may be a quantity of land not exceeding in amount one-fourth of an acre, with dwelling-house and appurtenances. The value of the homestead in either case may not exceed an assessed value of \$2,500 (1937, p. 518).

The wife of a judgment debtor may redeem his real estate when sold under execution, subject to redemption (sec. 9442). She then becomes owner of her husband's interest, subject to liens on it at the time of the execution sale. Within 1 year after the date of sale, the husband may redeem by paying the wife or her representative the redemption money plus interest and charges, as provided by law to be paid where the debtor redeems from strangers (1937, p. 284).

The homestead descends to the heirs or devisees of the person whose property was selected as a homestead, subject to its use by the widow or widower for life, and exempt from liability for the owner's debts (sec. 6973).

¹ *Mennell v. Wells* (1915), 51 Mont. 141, 148; 149 Pac. 954.

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

See Number 9.

5. Contractual Powers of Married Women.

Either spouse may enter into any engagement or transaction with the other, or with any other person, respecting property, into which either might enter, if unmarried, subject in transactions between themselves to the general rules that control the actions of persons occupying confidential relations with each other (sec. 5786).¹

The wife may, without consent, agreement, and signature of her husband, convey and transfer her separate property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof (sec. 5792);² she may make contracts, and waive or relinquish any right or interest in any real estate as if she were a single woman (sec. 5811).

A married woman may act as executrix, administratrix, guardian, or trustee, and may bind herself and the estate she represents without any act or assent on the part of her husband (sec. 5808).

A married woman may be appointed executrix or administratrix, as if unmarried, and when an unmarried woman is appointed in either

capacity, her marriage after appointment does not extinguish her authority (secs. 10059, 10073). She may be appointed as guardian (sec. 10405).

¹ *Koopman v. Mansolf* (1915), 51 Mont. 48, 55; 149 Pac. 491.

² *In re Mahaffay's Estate* (1927), 79 Mont. 10; 254 Pac. 875. (Hist.)

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

Unless there is a written agreement to the contrary, all work and labor performed by a married woman for a person other than her husband and children is presumed to be performed on her separate account (sec. 5797).¹ The earnings and accumulations of the wife are not liable for the debts of the husband (sec. 5795).

The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife (sec. 5796).

A married woman may sue in her own name alone to recover wages for services performed by her for a person other than her husband and children, in the absence of an agreement in writing showing that it is not her intention to hold such wages as her separate property (secs. 5791, 5797, 5809).²

¹ *Conley v. Conley* (1932), 92 Mont. 425; 15 Pac. (2d) 922. (Hist.)

² *Trogdon v. Hanson Sheep Co.* (1914), 49 Mont. 1, 6; 139 Pac. 792.

7. Liability of Married Woman for Family Necessaries.

The expenses for necessaries of the family and of the education of the children are chargeable upon the property of husband and wife, or either of them, and in relation thereto they may be sued jointly or separately (sec. 5790).

The husband is bound to provide, according to his means and condition in life, for the wife's maintenance and support; but if he is unable to do so, she must assist him as far as she is able (sec. 5784).

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability (sec. 5833).

If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value of them from the parent (sec. 5844), provided the child has not abandoned the parent without just cause (sec. 5845).

The wife must support the husband, when he has not deserted her, out of her separate property when he has no separate property and he is unable, from infirmity, to support himself (sec. 5802).

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

Special proceedings to enable a married woman to engage in an independent business are no longer required. The "free trader" statute was repealed in 1935. See Numbers 5, 6, and 9.

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

All the property owned by a woman before her marriage and that acquired afterward is her separate property. The wife may dispose of her separate property without the consent or joinder of the husband (sec. 5792). The separate property of the wife is exempt from the husband's debts and liabilities, except for necessities for herself and children under 18 years of age; but this exemption applies only to the separate personal property of the wife as to which she has made and filed an inventory in the office of the county clerk where she resides, as provided in sections 5793 and 5794. In no case will the wife's separate property be liable for the debts of the husband unless such property is in the sole and exclusive possession of the husband, and is available only to such persons as deal with the husband in good faith on the credit of the property, without knowledge or notice that the property belongs to the wife (sec. 5799).

"The present statutes insure to the wife such property as she may own at the marriage and acquire afterwards, and give her the power to protect, control, and dispose of the same in her own name free from the interposition of her husband."¹

Neither husband nor wife, as such, is answerable for the acts of the other, or liable for the debts contracted by the other (sec. 5790).

¹ *Conley v. Conley* (1932), 92 Mont. 425; 15 Pac. (2d) 922.

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

At common law the husband, as a result of the marriage, was entitled to the services and earnings of his wife; and even under the statutes that have enlarged the rights of married women, it is the duty of the wife, without compensation, to attend to all the ordinary household duties, and labor faithfully in the advancement of her husband's interests. The statute providing that the wife is entitled to her earnings for labor performed "for a person other than her husband" does not change the rule respecting the services which she owes her husband as head of the family.¹

By common law, also, whatever property is acquired during the marriage by the combined effort of husband and wife is the property of the husband, unless joint ownership is created by means of deed, or contract, or other valid private arrangement.

¹ *Gates v. Powell* (1926), 77 Mont. 554, 562; 252 Pac. 377.

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

A married woman in her own name may prosecute action for injuries to her reputation, person, property, and character, or for the enforcement of any legal or equitable right, and may in like manner defend any action brought against herself (sec. 5791). A married woman may sue and be sued in the same manner as if she were unmarried (sec. 9069). If husband and wife are sued together, the wife

may defend for her own right, and if the husband neglect to defend, she may defend for his right also (sec. 9070).

[An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover such damages as are assessed in her favor (sec. 9073).]

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.

In enacting the law respecting the rights, duties, and liabilities of married women the legislature did not intend to interfere with the centuries-old policy which prohibits the spouses from suing each other for a personal tort. Such a radical and far-reaching change should be wrought only by language so plain as to show unmistakable evidence of legislative intention.¹

The legislature seems satisfied with the statutory construction announced in the Conley case. In a later session a bill designed to enlarge the rights of the spouses to sue one another, including actions for personal torts, did not receive favorable action even in the house in which it originated.²

¹ *Conley v. Conley* (1932), 92 Mont. 425, 440; 15 Pac. (2d) 922. (Hist.)

² *Kelly v. Williams* (1933), 94 Mont. 19; 21 Pac. (2d) 58.

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

A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, without the consent of the other, be examined as to any communication made by one to the other during the marriage; but 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 (sec. 10536).

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

The only limitation by statute on the wife's right of disposition by will is that she may not, without her husband's written consent, deprive him by her will of more than two-thirds of either her real or personal estate (sec. 6975).¹

¹ *In re Mahaffay's Estate* (1927), 79 Mont. 10, 22; 254 Pac. 875. (Hist.)

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

Wife's Dower.

The wife has a dower interest in her deceased husband's real estate, unless she has made a valid relinquishment of this right (sec. 5813).

She may make any lawful contract respecting her dower interest after it is admeasured to her, accept a bequest in lieu of dower in advance of its allotment, or agree in advance to relinquish her claim upon

a sufficient consideration. See discussion in *Hannon v. Hannon et al.* (1912), 46 Mont. 253, 259; 127 Pac. 466.

Right of Election in Lieu of Dower.

Instead of her dower interest, if no children nor descendants of children survive, the widow may elect to take, absolutely and in her own right as if unmarried, one-half of the husband's real estate. This right of election may be exercised only after the rights of creditors are satisfied (sec. 5821). This estate falls to her, not as heir, or by will of her husband, but by virtue of her marital right, and without regard to the law relating to the rights of heirs, or to any will made by the husband.¹

Rights of Inheritance From Deceased Spouse.

The rights of husband and wife as heirs, each of the other, are the same under the statute which applies where either dies without leaving a will. Subject to the payment of the decedent's debts, and in the event there are no limitations under a marriage contract, the surviving spouse shares in the estate as follows:

- a. One-half absolutely, if only one child or its lawful issue survive.
- b. One-third, if more than one child or the lawful issue of one or more children survive.
- c. Entire net estate, if no issue survive the deceased spouse (sec. 7073, as amended, 1941, ch. 140, p. 253).

The wife's right under section 7073 does not affect her statutory dower right, but the two rights exist independently of each other.²

Refer also to the wife's right to renounce her husband's will, under Number 17.

¹ *Dahlman v. Dahlman* (1903), 28 Mont. 373, 378; 72 Pac. 748.

² *Hannon v. Hannon* (1912), 46 Mont. 253, 262; 127 Pac. 466.

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

Until administration is begun and an inventory of the estate filed, the widow or minor children are entitled to remain in possession of the homestead, family wearing apparel, and household furniture; also to be allowed by the court a reasonable provision for their support from the estate (sec. 10144).

After the inventory is returned, there may be set apart for the use of the surviving husband or wife, or the decedent's minor children, all property of the estate exempt from execution, including a homestead. A person must have been a bona fide resident of the State at the time of the decedent's death to receive this benefit (sec. 10145).

If necessary, the court may make further reasonable allowance out of the estate for the maintenance of the family, during the settlement of the estate (sec. 10146).

When such a family allowance is made, if no minor child survives, such property goes to the widow or surviving husband; if a minor child or children are living, one-half the allowance belongs to the surviving spouse, and the remainder to the child or in equal shares to the children, if more than one. If the property set apart is a homestead selected from the separate property of the deceased, the court can set

it apart only for a limited period, giving its use for life to husband or wife, the title in fee vesting in the heirs of the deceased subject to such life estate (sec. 10148). The surviving spouse may sell or mortgage this life estate.¹ If an estate is valued at \$1,500 or less, the whole of it is assigned for the support of the widow and minor child or children or to the widow if there are no minor children, subject only to payment of expenses of decedent's last illness, funeral charges, and administration expenses (sec. 10149, as amended 1941, ch. 57, p. 88). Estates of \$3,000 or less may be disposed of by shortened proceedings, in the discretion of the court (sec. 10149).

If the widow has a maintenance derived from her own property equal to the portion set apart to her by the provisions of law enumerated, the whole property so set apart, other than the homestead, must go to the minor children (sec. 10150).

¹ *Kerlee v. Smith* (1912), 46 Mont. 19, 22; 124 Pac. 777.

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

The widow may elect to renounce her husband's will and take instead her dower in the lands and her share in the personal estate (sec. 5819). Unless she renounces the will within the statutory period, a device or bequest bars her right of dower and of personalty (sec. 5820). No provision is made for the husband's election against the will of his wife. But see Number 14. See also Number 15.

II. MARRIAGE AND DIVORCE

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

Any unmarried male of 18 years or over, and any unmarried female of 16 years or over, when not otherwise disqualified, is capable of consenting to and consummating marriage (sec. 5696). But until the male is 21 and the female is 18 years of age, the minor applicant may marry only with the written consent of the father if living, or if not, then of the mother or guardian. Such consent is to be proved by the testimony of at least one competent witness (sec. 5712).

19. Validity of Common-Law Marriage.

The so-called "common-law marriage" is recognized as valid in this State, but to be effective there must be the mutual consent of parties able to consent and competent to enter into a ceremonial marriage, and the assumption of such relationship by consent and agreement, as of a time certain, followed by cohabitation and repute.¹

Marriage must be licensed, solemnized, authenticated, and recorded as provided in this chapter; but noncompliance with its provisions does not invalidate any lawful marriage (sec. 5709).

¹ *Elliott v. Industrial Accident Board* (1936), 101 Mont. 246, 254; 53 Pac. (2d) 451.

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

Each applicant for license to marry must file a certificate from a qualified physician, or other person authorized by the State law for the

purpose, stating that applicant has been given an examination including a standard serological test for syphilis within 20 days prior to the date license is issued, and that each party to the proposed marriage has examined the report of the test made for the other (1947, ch. 208, p. 272).

[An amendment by chapter 72, Laws of 1935, which required physician's certificate as to venereal disease, tuberculosis, or other infectious disease, was suspended by referendum petition of the people November 3, 1936. See historical note under section 5714.]

21. Interstate Cooperation in Marriage Law Enforcement.

All marriages contracted without the State, which would be valid by the laws of the country in which the same were contracted, are valid in this State (sec. 5707). See Number 22 as to certain interracial marriages.

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

A decree of annulment may be granted for any of the following causes, existing at the time of the marriage:

Non-age of either party without parental consent, or ratification of marriage after attaining age of consent to marriage; an undissolved prior marriage; unsound mind, unless such party after coming to reason freely cohabited with the other as husband and wife; consent obtained by fraud, unless marriage ratified by free cohabitation after discovery of fraud; consent obtained by force, unless marriage later ratified by free cohabitation; physical incapacity to enter the marriage state, continuing and apparently incurable (sec. 5729).

Marriages within prohibited degrees of kindred or between persons either of whom is feeble-minded are incestuous and void from the beginning (sec. 5699). A bigamous marriage is illegal and void from the beginning (sec. 5705). Marriages are utterly null and void between white persons and those of Negro blood (sec. 5700), or between white persons and Chinese (sec. 5701), or between white persons and Japanese (sec. 5702). Such an interracial marriage, contracted or solemnized without the State by any person who has, prior to the marriage, been a resident of Montana, is null and void within the State (sec. 5703).

Either party to an incestuous or void marriage may proceed, by action in the district court, to have such marriage declared void (sec. 5728).

An action to obtain a decree of nullity of marriage for causes stated in section 5729 must be commenced within the respective periods and by the parties authorized, as set out in the statute (sec. 5730). There is no discrimination between sexes in the granting of relief by statutes governing annulments.

23. Grounds for Divorce—Respective Availability to Spouses.

Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes: Adultery, extreme cruelty, willful desertion, habitual intemperance, or

conviction of felony. The wife may be granted divorce, legal separation, or separate maintenance for the willful neglect of the husband. Willful desertion, willful neglect, or habitual intemperance must continue for one year to constitute a ground for divorce (secs. 5736, 5747, 5749).

Incurable insanity of at least 5 years' duration may be ground for divorce, under specified conditions (sec. 5736-1; 1937, p. 108; 1945, p. 418).

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 to prosecute her suit without costs (sec. 5780).

III.—PARENTS AND CHILDREN

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

The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services, and earnings. If either parent is dead, or unable, or refuses to take the custody, or has abandoned his or her family, the other is entitled to its custody, services, and earnings (sec. 5834).

But the wages of a minor employed in service may be paid him until the parent or guardian entitled to such wages gives the employer notice that he claims them (sec. 5849).

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

The father of the minor, if living, and in case of his death, the mother, must be entitled to appointment as guardian of the child, if the parents are respectively competent to transact their own business and are not otherwise unsuitable (sec. 10405). No person, whether parent or otherwise, has any power as guardian of property except by appointment (sec. 5874).

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

A guardian of the person or property, or of both, of a child born, or likely to be born, may be nominated by will or deed, to take effect upon the death of the parent nominating:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent if the other be dead or incapable of consent.

2. If the child be illegitimate, by the mother (sec. 5873).

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

If a decedent dies without making a will, and leaves no issue and no surviving husband or wife the whole estate goes to the father and mother in equal shares, or if either is dead, then to the other (sec. 7073, as amended 1941, ch. 140, p. 253).

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

When the paternity of the child is determined, the court issues a decree that charges the father with maintenance of the child in such sum as the court finds proper. Execution against the property of the adjudged father may be issued, if payment is not made of the sums ordered by the court. Jail commitment may follow a failure to comply with the decree (sec. 12273).

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

If the child dies intestate, without lawful issue, and has not been acknowledged or adopted by his father, his estate goes to his mother, or in case of her decease, to her heirs at law (sec. 7075).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The residence of the husband is presumptively the residence of the wife (sec. 33). The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto (sec. 5783). If she fails so to conform, it is desertion (sec. 5745). But if the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him (sec. 5746).

31. Public Office—Eligibility of Women.

Any person qualified to vote at general elections and for State officers is eligible generally to any office in the State (Const., art. IX, sec. 11). The sex attribute has been eliminated as a qualification to hold any office under the Constitution or laws of the State.¹

¹ *Rose v. Sullivan* (1919), 56 Mont. 480, 485; 185 Pac. 562.

32. Jury Service—Eligibility of Women.

Women who possess the requisite statutory qualifications are competent to act as jurors. Exemption may be granted to a nurse on duty or to a person caring directly for a child or children (1939, ch. 203, p. 508).

A separate retiring room must be provided for female jury members held overnight (1945, ch. 29, p. 38).

