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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
NEW JERSEY

*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. 157-29 (Revised)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1948

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
WASHINGTON, D. C.

The Legal Status of Women in the
United States of America

Fourth Edition

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.

ii



Bureau of the Women's Bureau, No. 1574 (1948)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1948

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LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, October 5, 1948.

SIRS: I have the honor to transmit to you a revised report on the legal status of women in New Jersey. 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.

OFFICE OF THE SECRETARY OF THE TREASURY

UNITED STATES DEPARTMENT OF THE TREASURY

WASHINGTON, D. C.

February 10, 1917

Dear Sir: The honor of the position of Secretary of the Treasury is a great one, and it is a privilege to have you accept it. The position is one of the most important in the Government, and it is a position of great responsibility. I am sure that you will discharge the duties of the position with the highest ability and integrity.

The position of Secretary of the Treasury is a position of great honor and responsibility. It is a position of great trust, and it is a position of great influence. I am sure that you will discharge the duties of the position with the highest ability and integrity.

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CONTENTS

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.
2. Contractual Powers of Minors.
3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.
4. Property of Married Woman Owned at Marriage—Ownership After Marriage.
5. Contractual Powers of Married Women.
6. Separate Earnings of Married Woman—Ownership and Control.
7. Liability of Married Woman for Family Necessaries.
8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.
9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.
10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.
11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.
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.
13. Competency of Spouses to Testify For or Against Each Other.
14. Disposition of Separate Property by Will—Extent of Married Woman's Right.
15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.
16. Provision for the Surviving Spouse During Administration of the Estate.
17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.
19. Validity of Common-Law Marriage.
20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.
21. Interstate Cooperation in Marriage Law Enforcement.
22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.
23. Grounds for Divorce—Respective Availability to Spouses.

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.
25. Guardianship of Minor Children—Parents' Respective Rights.
26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.
27. Inheritance from an Intestate Child—Parents' Respective Rights.
28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.
29. Inheritance from Child Born Out of Wedlock—Mother's Right.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.
31. Public Office—Eligibility of Women.
32. Jury Service—Eligibility of Women.

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.

NEW JERSEY

SOURCES

Constitution of New Jersey.
Revised Statutes of New Jersey, 1937, and Cumulative Supplements.
Session Laws, 1941, 1947.
New Jersey Miscellaneous Reports.
New Jersey Equity Reports.
New Jersey Law Reports.
Atlantic 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. 10, sec. 1), placed after the related subject matter.

References to the Revised Statutes and Cumulative Supplements are likewise in parentheses, thus (sec. 37: 2-16).

Session laws are referred to by year of enactment and page number, as (1941, p. 508).

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 though 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."

NEW JERSEY

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of majority is 21 years for men and women, by rule of common law, which governs in the absence of an express statute (Const., art. 10, sec. 1).

2. Contractual Powers of Minors.

Generally, the contracts of an infant are not absolutely void,¹ but voidable only.²

Likewise, an infant's deed is voidable, and his right to disaffirm it continues for 20 years after he attains his majority, unless he has ratified the transaction. The court observes that:

“* * * No formal act is necessary to constitute ratification. Any conduct on the part of the former infant which evidences his decision that the transaction shall not be impeached, is sufficient for this purpose.”³

Under the provisions of the Uniform Sale of Goods law, where necessities are sold and delivered to an infant he must pay a reasonable price for them. “Necessaries” means goods suitable to the condition in life of the infant and to his actual requirements at the time of delivery (sec. 46:30-8).

A man at 18 and a woman at 16 years of age may appear and prosecute or defend a suit for divorce or nullity of marriage in his or her proper person or by his or her solicitor (sec. 2:50-14).

A minor of the age of 15 years is competent to contract for insurance on his life for the benefit of himself or designated relatives; also, to make contracts for surrender of the insurance, discharge of benefits, or money payable under the policy (sec. 17:34-30).

See Number 14 as to wills.

¹ *La Rosa v. Nichols* (1918), 92 N. J. Law 375, 379; 105 Atl. 201.

² *Mott v. Tossa* (1935), 119 N. J. Eq. 185, 191; 181 Atl. 689.

³ *Mott v. Tossa* (1935), 119 N. J. Eq. 185, 192; 181 Atl. 689.

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

Personal Property.

Goods and chattels, shares of stock or interests in any corporation and personal property of every kind, not exceeding \$200 in value, and all wearing apparel, owned by a debtor having a family residing in this State, is reserved, both before and after his death, for the use of his family, exempt from seizure under legal process, except for purchase-money or taxes (sec. 2:26-99). See also Number 16.

Household goods and furniture, not exceeding \$200 in value, of a debtor who has a family residing in the State are exempt from attachment, except for a debt incurred for the purchase-money of such property (sec. 2: 42-6).

Exemption from Distress.

"Beasts of the plow, sheep, or implements of a person's trade, shall not be distrained for any cause whatsoever, while other distress or chattels may be found sufficient for the levy, except the distraining and impounding of beasts found on the ground of any person damage feasant" (sec. 2: 49-3).

Wages and Earnings.

Not more than 10 percent of a judgment debtor's weekly income to the amount of \$18 or more, derived from wages, debts, earnings, salary, income from trust funds, or profits due and owing to him, may be subjected to execution by a judgment creditor. If, however, the debtor's income from such sources exceeds \$1,000 per year, the court may order a larger percentage subject to execution. Only one execution may be levied at one time against such income (secs. 2: 26-182 to 2: 26-184). Execution may not issue if the earnings are under \$18 per week.¹

Insurance.

The lawful beneficiary under a life insurance policy, other than the insured himself, is entitled to the proceeds against the creditors and representatives of the person effecting the policy, except that where due notice is given to the company, a creditor is entitled to recover the amount of any premiums paid in fraud of his rights (sec. 17: 34-28). Every policy of life insurance payable to or for the benefit of a married woman is to be held for her use and benefit, and that of her children, subject to the statutory provisions preserving creditors' rights (sec. 17: 34-29).

Homestead.

The law exempts from sale or execution, for debts contracted, the lot and buildings on it occupied as a residence and owned by the debtor, being a householder and having a family, to the value of \$1,000 (sec. 2: 26-110). This exemption continues after the death of the householder for the benefit of his widow and family, as long as some or one of them continue to occupy the homestead, until the youngest child reaches the age of 21 years and until the death of the widow (sec. 2: 26-111). No release or waiver of the homestead exemption is valid (sec. 2: 26-112). To entitle any property to this exemption, either the conveyance must designate it as a homestead or a formal declaration, as prescribed by law, must be made and recorded by the person owning the property, and notice published weekly for not less than 6 weeks (sec. 2: 26-113). When so declared, the homestead is reserved for use of the debtor's family, and is not to be leased or sold, aliened, or encumbered unless: (1) The full consent of the owner's wife or husband, if any, is duly acknowledged by deed; (2) the consideration paid is the full fair value, and such consideration, or \$1,000 of it, is actually invested in other lands and buildings declared to be a homestead. The title of a purchaser to the original homestead is not good until the purchase money is so invested, unless the homestead owner has removed out of the State (secs. 2: 26-120, 2: 26-121).

¹ *Oetjen v. Hintemann* (1916), 91 N. J. Law 429; 106 Atl. 213.

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

The real and personal property which a woman owns at the time of her marriage remains her separate property (sec. 37:2-12).

5. Contractual Powers of Married Women.

Any married woman has the right to contract in the same manner and to the same extent as though she were unmarried. Such a contract is legal and binding, enforceable in law or in equity by and against her in her own name, apart from her husband. The sole contract of a married woman concerning her rights in her real property or that of her husband is valid without the husband's joinder or consent, but does not affect any right of the husband in such real estate (sec. 37:2-16). See Number 15—Life Interests.

A married woman may contract, in her own name or that of a trustee, for insurance on the life of her husband, for her sole use. If she survives her husband, the proceeds of the policy payable to her are for her own benefit, free from claims of the husband's representatives or creditors. If she dies first, the insurance may be made payable to her children (sec. 17:34-26). She may transfer or assign such a policy to her husband or to any other person, with his assent (sec. 17:34-27).

The provisions of the Married Woman's Act do not enable a husband or wife to contract with or to sue each other generally, but only in cases expressly provided by law (sec. 37:2-5).

Since a married woman cannot make a valid contract of employment, either express or implied, with her husband, she cannot recover under the State Workmen's Compensation Act for an injury sustained by her while rendering services to her husband in his business.¹

[Though contracts between husband and wife are void at law, they are good in equity if fair and fairly obtained. See *Ward v. McLellan* (1934), 116 N. J. Eq. 308, 173 Atl. 589, and citations.]

A married woman may make any instrument relating to or affecting her estate, interest, or right in her real property or in that of her husband, with the same effect as if she were unmarried, and any such instrument is valid without the joinder or consent of her husband. But no conveyance, deed, contract, or act of such married woman affects any estate, interest, or right of her husband in the property (sec. 37:2-17). See Number 15—Life Interests.

A conveyance of real estate, or any interest in it, may be made by one spouse directly to the other (sec. 37:2-18). Either husband or wife may create a tenancy by the entirety by conveyance to self and the other spouse. Also, either spouse may convey to the other his or her interest in an estate by the entirety (1947, p. 1276).

When the spouses are living in a state of separation under a final court decree, the one upon whose application the separation was granted may dispose of his or her real property as if sole and unmarried, except any received by gift from the other spouse (secs. 37:2-23, 37:2-24).

A statutory provision enables a married woman by court proceeding to mortgage or convey proper title to her lands within the State, when her husband is mentally incompetent (secs. 37:2-25 to 37:2-29).

A married woman may sue or be sued without her husband joining, unless he would be a necessary party if he were not her husband (sec.

37:2-6). If a female party to an action marries after suit is brought her rights in court are not affected (sec. 37:2-7).

Liability for Debts or Torts.

A married woman is liable as a feme sole, together with any property she owns, for debts contracted before her marriage or in her own name after marriage (sec. 37:2-10).

Any judgment or decree obtained against a married woman under the Married Woman's Act is valid and effectual as if against an unmarried person, but such judgment or decree does not affect any interest of her husband in her real property (sec. 37:2-11).

For all torts committed by a married woman, damages may be recovered from her alone. Her husband is not responsible for them by reason of the marriage relation (sec. 37:2-8).

A married woman may be an executrix, administratrix, guardian, or trustee, as if she were a feme sole. If a woman marries after her appointment in any one of these capacities, her official status is not affected by the marriage (sec. 37:2-1).

¹ *Maurello v. Maurello* (1932), 10 N. J. Misc. 950; 161 Atl. 844.

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

"The wages and earnings of a married woman acquired or gained by her in any employment, occupation or trade since July 4, 1852, or acquired or gained by her prior thereto in any employment, occupation or trade carried on separately from her husband, and all investments of such wages, earnings, money or property shall be her separate property as if she were a feme sole. All work and labor performed by a married woman, from and after April 3, 1928, for third persons shall, unless there is an agreement on her part to the contrary, be deemed to be performed on her separate account" (sec. 37:2-13).

[Prior to April 3, 1928, the right of action for the recovery of moneys earned by a married woman in and about her husband's household lay with the husband. See *Miller v. Marshall* (1934), 113 N. J. Law 420, 424, 174 Atl. 726, citing *Kleinert v. Hutchison* (1923), 98 N. J. Law 831, 121 Atl. 742.]

7. Liability of Married Woman for Family Necessaries.

So long as the marriage relationship exists, there is a common-law responsibility imposed upon the husband to support and maintain his wife and family if he is able to do so.¹ To impose such an obligation upon the wife, there must be either an express contract to pay out of her own estate, or circumstances clearly showing the assumption of individual liability on her part exclusive of that of her husband.^{2 3} See Number 5—Liability for Debts or Torts.

¹ *Rich v. Rich* (1934), 12 N. J. Misc. 310, 315; 171 Atl. 515.

² *Auten v. Johnston* (1935), 115 N. J. Law 71, 75; 178 Atl. 187.

³ *Wilson v. Herbert* (1879), 41 N. J. Law 454, 461. (Hist.)

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

No formal procedure is required by statute to enable a married woman to engage in a separate business.

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

"The real and personal property of a woman which she owns at the time of her marriage, and the real and personal property, and the rents, issues and profits thereof, of a married woman, which she receives or obtains in any manner whatever after her marriage, shall be her separate property as if she were a feme sole" (sec. 37:2-12). See Number 6 as to separate earnings.

"The paraphernalia of a married woman, being the suitable ornaments and wearing apparel of a married woman, which have come to her through her husband during coverture, shall be her separate property as if she were a feme sole" (sec. 37:2-14).

All property, things in action, or other rights or interests, declared by law to be the separate property of a married woman, are not subject to the disposal of her husband nor liable for his debts (sec. 37:2-15).

The proceeds from a partition or other court sale of a married woman's interest in real estate acquired by her through inheritance, gift, or will may be paid to her upon court order, as prescribed by statute, free of any claim of the husband, when she has lived separate and apart from him for 3 or more years next preceding her application for payment (sec. 37:2-21).

A conveyance of land to husband and wife creates an estate by the entirety, as at common law, with the right of survivorship in each spouse unless the conveyance itself shows a contrary intention; but the Married Woman's Act has extinguished the common-law right of the husband to exclusive use and enjoyment of the property during the joint lives of the spouses. The wife is endowed with the capacity during the joint lives to hold in her possession, as a single female, one-half of the estate, in common with her husband. Only that estate which the husband takes in his own right is subject to execution for his debts.¹ Each spouse is entitled to one-half the income, rents, and profits.² See also Number 5.

Tenancies by the entirety in personal property are not recognized.³

Unless other provision is made in the conveying instrument, a mortgage on land or personalty made to a husband and wife creates a joint tenancy and not a tenancy in common (1947, p. 866).

¹ *Buttlar v. Rosenblath* (1887), 42 N. J. Eq. 651; 9 Atl. 695. (Hist.) Cited and followed in *Damron v. Mast* (1937), 121 N. J. Eq. 489, 495; 191 Atl. 467.

² *Zanzonico v. Zanzonico* (1938), 124 N. J. Eq. 477, 480; 2 Atl. (2d) 597.

³ *Central Trust Co. v. Street* (1923), 95 N. J. Eq. 278; 127 Atl. 82.

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

Except as otherwise provided by express statute, the common-law rule applies (Const., art. 10, sec. 1). Under this rule, property acquired by the joint labors of husband and wife during marriage usually belongs to the husband, in the absence of specific statute or a valid private agreement. However, the practice is quite general to create joint ownership between husband and wife by private arrangement, such as joint deeds or joint bank accounts.

Any writing in the nature of a chattel mortgage on household goods and furniture unless for purchase money, must be executed as prescribed by statute by both husband and wife, when such property is in the use and possession of a family (sec. 46:28-6).

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

Any married woman may sue in her own name, without the joinder of her husband, for all torts committed against her, or her separate property, as if she were unmarried (sec. 37: 2-9).

The Married Woman's Act was intended to confer upon a married woman the power to protect and enforce her rights. It declares that she may maintain an action as a single woman might lawfully do, and without joining her husband in the suit, for all torts committed against her or her property.¹

So far as the enforcement of her rights is concerned, against third persons to redress wrong committed against her, she stands in the same relation to her husband as to a stranger.²

¹ *Sims v. Sims* (1910), 79 N. J. Law 577, 582; 76 Atl. 1063 (Hist.).

² *Peskovitz v. Kramer, Inc.* (1929), 105 N. J. Law 415, 418; 144 Atl. 604.

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

A husband and wife are not enabled generally to sue each other by the provisions of the Married Woman's Act (sec. 37: 2-5) and there is no express statute changing the common-law rule as to personal injuries.

In dismissing a bill in equity by which a wife sought to recover damages from her husband for personal injuries sustained by her through the husband's negligence in the operation of his automobile, the court observed that neither at law nor in equity can an action be maintained by a wife against her husband for personal injuries. The court held that a change in this long-established rule must be accomplished by legislative action, and would not be done by implication from the provisions of the Married Woman's Act.¹

¹ *Von Laszewski v. Von Laszewski* (1926), 99 N. J. Eq. 25; 133 Atl. 179.

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

No person may be excluded as a witness in any action, proceeding, or matter of a civil or criminal nature, because of marital relationship, except as otherwise provided by statute (sec. 2: 97-1).

In any criminal action or proceeding, either spouse is competent to testify against the other to prove the fact of marriage. Upon the trial of any indictment, a married woman may be admitted to testify against her husband when she is the complainant against him, if she offers herself as a witness.

Except as specifically provided by statute, no husband or wife is competent to give evidence against the other in any criminal action or proceeding (sec. 2: 97-4).

Privilege by Reason of Marital Relationship.

Except to prove the fact of marriage, no husband or wife may be compelled to give evidence: (1) For the other in any divorce proceeding on account of adultery; (2) against the other in any criminal action or proceeding; (3) for or against the other in any action for criminal conversation.

No husband or wife may be compelled in any action, proceeding, or matter to disclose any confidential communication made by one to the other during marriage (sec. 2:97-9).

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

A married woman above the age of 21 years may dispose of her property by will as if unmarried, except the interest in her real property to which her husband would be entitled by law at her death (sec. 37:2-2).

A person within the age of 21 years is incompetent to make a valid will (sec. 3:2-2).

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

ABSOLUTE INTERESTS

Real Estate.

When a married person dies intestate as to any real estate owned in fee simple, a surviving spouse takes absolutely all such real estate if the decedent left no lawful issue (sec. 3:3-4, as amended 1941, p. 508).

As to real property not purchased by the decedent during the marriage, owned by him or her in fee simple and not disposed of by a valid will of the decedent, a surviving spouse takes outright only when the deceased spouse left no (1) lawful lineal descendants; (2) brothers or sisters of the whole or half blood or lawful issue of any of them; (3) parents or parent; or (4) other relatives of the whole or half blood capable of inheritance under the statute (sec. 3:3-9).

"Purchase," as here used, is the acquisition of land by other means than descent.¹

No statutory provisions for descent of real estate, may be construed to bar or injure curtesy or dower rights or to affect in any way a marriage settlement (sec. 3:3-15).

Personal Property.

Of the personal property not bequeathed by a decedent's will, remaining after payment of debts, funeral charges, and just expenses, a surviving spouse receives one-third, when decedent leaves lineal descendants (secs. 3:5-1, 3:5-2); the whole, when no lineal descendant survives (sec. 3:5-3).

LIFE INTERESTS

A surviving spouse, whether alien or not, of a person dying intestate or otherwise, is endowed for life of one-half of all real estate in which the deceased husband or wife held title at any time during the marriage which could be inherited by his or her heirs and to which he or she had not released the right of curtesy or dower by valid deed (secs. 3:37-1, 3:37-2).

These rights of husband and wife are present, fixed, and vested valuable interests in the lands of inheritance of which the deceased spouse was seized at any time during the marriage, provided the property was acquired after the effective dates of the present dower and curtesy acts^{2 3} [December 31, 1928, and January 1, 1929, respectively (secs. 3:37-1, 3:37-2, notes)].

In lands acquired by a spouse prior to the effective dates of the present dower and curtesy acts, a widow has a dower interest in one-third only (Statutes 1847, title 4, ch. 4), and a surviving husband, by rule of common law, has a life estate in the whole provided a child capable of inheriting it from the mother is born alive during the marriage.

It is said that no conflict exists between the operation of the law as to dower or curtesy and the operation of the law as to devise or intestate succession, and that when a spouse entitled to dower or curtesy becomes vested with absolute title by will or inheritance the former right is merged in the latter.⁴

Bar of Dower or Curtesy.

A married person who voluntarily leaves his or her spouse and goes away and continues with his or her paramour will be forever barred from jointure, dower, or curtesy, unless the deserted spouse voluntarily becomes reconciled to and lives with the deserting spouse (sec. 3:39-2).

A widow may be barred of her dower by jointure (sec. 3:39-4). See Number 17 as to bar by will in some cases.

¹ *Malague v. Marion* (1930), 107 N. J. Eq. 333, 336; 152 Atl. 637.

² *Gerhardt v. Sullivan* (1930), 107 N. J. Eq. 374; 152 Atl. 663.

³ *Stabel v. Gertel* (1933), 11 N. J. Misc. 247; 165 Atl. 876.

⁴ *Kickey v. Kickey* (1933), 112 N. J. Eq. 459, 464; 164 Atl. 684.

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

Quarantine.

Until dower or curtesy is assigned, the widow or widower may occupy the mansion house of the deceased spouse, "and the messuage or plantation belonging thereto," without liability for rent (sec. 3:37-4).

The widow's possession or quarantine is an incident only to her dower, belonging to that right and inseparable from it.¹

"* * * The right of quarantine is a right which exists for the benefit of a widow and is given to her as a means of enforcing her dower right so as to prevent the executors of an estate from refusing to assign dower. In order to give additional strength to this provision, the law imposes no obligation on a widow, holding by virtue of her right of quarantine, to pay taxes or make repairs."²

Exemption for Benefit of Widow or Child.

The wearing apparel of any person who dies leaving a family residing in the State, and his personal property to the value of \$200 are exempt for the use of his family against all creditors and before any distribution or other disposition of such property; subject, however, to provisions of the decedent's will. Every person residing in this State at the time of his death, who leaves a widow or child residing in his family at his death, is deemed to have left a family entitled to the benefits of this exemption (sec. 3:9-7). The widow of the decedent, or his executor or administrator, may select from the completed inventory personal property so allowed as exempt, up to the value of \$200. Property thus selected thereafter belongs to the family and remains for their use (sec. 3:9-8). See also Numbers 3 and 5.

Allowance to Widow or Children Pending Contest or Probate of Will.

When the probate of a will is contested, the authorized court, upon proper petition by the widow or other person designated by statute,

may order payment from the income of the estate of such an allowance for the support and maintenance of the widow or child or children as the court deems just. A widow may receive the benefit of this provision only when she had been ceremonially married to the decedent, and was living with him as his wife at the time of his death (sec. 3:2-29).

Summary Administration.

Where the total value of the real and personal assets of an intestate decedent does not exceed \$200, the surviving spouse is entitled absolutely to the property, without administration and free from the lien of all debts of the decedent (sec. 3:7-8).

Deceased Employee's Wages.

Unpaid wages not exceeding \$75 due to a deceased employee may be paid, without an administration, to such employee's surviving wife, child or children, father or mother, sister or brother, preferring such persons in the order named. Such payment may not be made until 30 days after the employee's death (sec. 34:11-30).

¹ *Bleecker v. Hennion* (1872), 23 N. J. Eq. 123, 125.

² *Asmus v. Asmus* (1937), 122 N. J. Eq. 485, 487; 194 Atl. 884.

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

When a husband or wife makes a valid devise of real estate to his or her spouse, for life or otherwise, without expressing whether or not it is intended to be in lieu or bar of dower or curtesy, the surviving spouse is not entitled to dower or curtesy in any real estate devised by the will, unless, within 6 months after probate of the will, he or she files a written refusal to receive the real estate so devised to him or her instead of "dower or curtesy in other real estate." The filing of such a refusal, as prescribed by statute, gives effect to the right of dower or curtesy (sec. 3:39-1).

When a will specifically provides that the gifts to the wife are in lieu of her dower, a dissent may be filed after the 6-month period, as this statute does not apply in such a case.¹

See Number 14.

¹ *First Nat. Bank v. Scott* (1931), 109 N. J. Eq. 244, 245, 246; 156 Atl. 836.

II.—MARRIAGE AND DIVORCE

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

A marriage license may not be issued to a minor under the age of 21 years if a male, or under the age of 18 years if a female, without the consent of the minor's parents, parent, or guardian, if there be any. Such consent must be duly certified in the presence of two reputable witnesses, and delivered to the licensing officer.

The required consent may be waived on the application of a male minor under 21 years of age who is under arrest on a charge of sexual intercourse with a single, widowed, or divorced female of good repute for chastity who has thereby become pregnant (sec. 37:1-6).

But this statute has not changed the common-law rule, under which females at 12 [and males at 14] years of age may consent to marriage. Such a marriage is not void, but voidable only, and may be ratified by the party under age when he or she attains the age of 18 years.¹

See also Number 22.

¹ *Fodor v. Kunie* (1920), 92 N. J. Eq. 301, 305; 112 Atl. 598.

19. Validity of Common-Law Marriage.

Common-law marriages are void if contracted after December 1, 1939 (R. S. Cum. Supp. 1938-1940, sec. 37:1-10).

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

Each applicant for license to marry must file with the licensing official a certification from a qualified physician that a standard blood test for syphilis has been made and that in his opinion the disease either is not present, or if present, is not in a communicable stage.

A statement from the testing laboratory, containing prescribed information, must accompany the certificate. The test must have been made within the 30-day period immediately preceding the issuance of the license.

Exception to the law is made only in certain emergency cases prescribed by statute. (R. S. Cum. Supp., 1938-1940, secs. 37:1-20 through 37:1-27).

No marriage license may be issued when either of the contracting parties, at the time application is made, is infected with gonorrhea, syphilis, or chancroid in a communicable stage, is under the influence of intoxicating liquor or a narcotic drug, or is an imbecile, epileptic, or of an unsound mind. Nor may such a license be issued to a person who is or has been an inmate of an insane asylum or institution for indigent persons, unless it is shown that such person has been satisfactorily discharged (sec. 37:1-9).

[It is provided in the criminal code that: "Any person who, knowing himself or herself to be infected with a venereal disease * * *, shall marry, shall be guilty of a misdemeanor" (sec. 2:150-1), and any person of sound mind who marries, or assists any other person to marry, a person known by him or her to have been confined in a public institution as an epileptic, or insane or feeble-minded person, unless satisfactorily discharged, is guilty of a misdemeanor (sec. 2:150-2).]

The contracting parties are required to appear in person before the licensing officer, and attest under oath the truth of the facts respecting the legality of the proposed marriage as set forth in the form supplied by the State bureau of vital statistics. The testimony given must be verified by a witness of legal age residing in the municipality in which the license is to be issued. The license may be issued only if no legal impediment to the marriage is shown. Any applicant who knowingly gives false answers in such testimony is guilty of perjury (sec. 37:1-8). Any licensing officer who issues a marriage license except as provided by the statute is guilty of a misdemeanor (sec. 37:1-11).

Waiting Period.

Forty-eight hours must elapse between application for and issuance of a license to marry. License must be obtained by the contracting parties at least 24 hours prior to the time the ceremony is to be performed, and is valid only for 30 days from the date of issuance (sec. 37:1-4).

21. Interstate Cooperation in Marriage Law Enforcement.

Generally the established rule is followed, that a marriage which is valid where performed is valid everywhere.¹

¹ *Sturm v. Sturm* (1932), 111 N. J. Eq. 579, 582; 163 Atl. 5.

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

A decree of nullity may be rendered when —

(1) Either of the parties has a wife or husband living at the time of a second or other marriage;

(2) The parties are within the degrees of kindred prohibited by law;

(3) The parties, or either of them, were at the time of marriage physically and incurably impotent, provided the applicant for annulment was ignorant of the condition at the time of the marriage, or has not subsequently ratified the marriage;

(4) The parties, or either of them, were at the time of marriage incapable of consent, and the marriage has not been ratified subsequently.

Such a decree may be granted—

(5) At the suit of the wife, when she was under the age of 18 years at the time of the marriage, unless the marriage is confirmed by her after arriving at 18 years of age; or

(6) At the suit of the husband, when he was under the age of 18 years at the time of the marriage, unless the marriage is confirmed by him after arriving at 18 years of age. No decree of nullity will be made where a child of the parties has been born, either before or after the marriage, or is likely to be born, unless the court, upon an examination of all the facts, concludes that such a decree will not be against the best interests of the child (sec. 2:50-1).

23. Grounds for Divorce—Respective Availability to Spouses.

Divorce from the bond of matrimony may be decreed for the following causes: Adultery by either of the parties; willful, continued, and obstinate desertion for the term of 2 years; extreme cruelty by either of the parties (sec. 2:50-2). Communication of venereal disease by the husband to the wife constitutes extreme cruelty.¹

Divorce from bed and board may be decreed for the same causes (sec. 2:50-3).

In all cases of divorce from bed and board the court has discretion to grant a separation forever or for a limited time, as the facts appear to justify (sec. 2:50-4).

An absolute decree granting annulment or divorce will be entered on application of petitioner, at the expiration of 3 months from the granting of a temporary decree, unless the case is appealed or withdrawn (secs. 2:50-29 to 2:50-31).

¹ *Gartner v. Gartner* (1931), 109 N. J. Eq. 112; 156 Atl. 678.

III.—PARENTS AND CHILDREN

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

The father and mother of a minor child are equally entitled to its services and earnings. If one parent is dead, has abandoned the child, or has been deprived of its custody by court decree, the other is entitled to its services and earnings.

The parents may sue jointly for loss of the wages or services of their minor child when such loss is occasioned by an injury, wrongfully or negligently inflicted upon such child. If one parent is dead, or has

abandoned the child, or has been deprived of its custody by court decree, or refuses to sue, the other may sue alone (sec. 9: 1-1).

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

When any minor comes into ownership of real or personal estate, the authorized court may appoint either parent, or other suitable person, guardian of the estate (sec. 3: 7-28).

When the total value of the assets of the minor's estate does not exceed \$100, either parent is entitled to receive the property for the minor's use and benefit, without being appointed guardian, upon execution of proper affidavit (sec. 3: 7-29).

When a controversy has arisen between the parents and a court decree is required to adjust the differences, in the absence of misconduct the rights of both parents to the custody of their infant children are to be held equal, and they are to be equally charged with the children's care, nurture, education, and welfare; the happiness and welfare of the children are to determine the custody or possession (sec. 9: 2-4).

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

Either parent, whether over or under the age of 21 years, may dispose by deed or will of the custody and tuition of any of his or her minor unmarried children, including any unborn at the time of the appointing parent's death (sec. 3: 7-14). Such disposition by appointment is effective only upon the written consent, duly witnessed, of the other parent, if both parents are living (sec. 3: 7-15).

If no appointment was made, as provided by statute, during the life of both parents, the surviving parent may appoint by will a guardian for his or her minor child or children in all cases in which one parent is authorized to make such appointment with the consent of the other (sec. 3: 7-16).

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

Real Estate.

When a person dies intestate as to any real estate owned in his own right in fee simple, and leaves no lawful issue, no brother or sister of the whole blood nor lawful issue of such brother or sister, but leaves both father and mother, the inheritance goes to the father and mother as tenants by the entirety in fee simple. If only one parent survives the decedent, the property goes solely to that parent, unless decedent received it by descent, will, or gift from the deceased parent, in which case the property descends as if both parents had predeceased the decedent.

These provisions for inheritance do not apply to any real estate purchased by the deceased spouse during marriage and passing under the statute to a surviving spouse (sec. 3: 3-6). Nor do these provisions bar the marital rights of a surviving spouse of the deceased child (sec. 3: 3-15). See also Number 15.

Personal Property.

When the decedent leaves no husband or widow, and no child nor legal representative of a child, personal property not disposed of by

will, remaining after payment of debts, funeral charges, and just expenses, is divided equally among the parents and brothers and sisters, and the representatives of deceased brothers and sisters. Such representatives are limited to the children of the deceased brothers and sisters (secs. 3:5-1, 3:5-4).

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

A child born out of wedlock is entitled to support and education from its father and mother to the same extent as if born in lawful wedlock (sec. 9:16-2).

Proceedings to enforce these obligations may be maintained by one parent against the other, by the person having physical custody of the child, or, if the child is likely to become a public charge, by the overseer of the poor where the parents or one of them reside (sec. 9:16-3).

These remedies supplement those provided by bastardy proceedings (sec. 9:16-4).

The mother of an illegitimate child has exclusive right to its custody and control. The putative father has no right of custody, control, or access to such child without the mother's consent (sec. 9:16-1).

Under the bastardy statute, when it appears that a child born or to be born out of wedlock is likely to become a public charge, filiation proceedings may be instituted as prescribed by law. If at the trial the paternity of the child is established, the magistrate will make an order of filiation. This order must specify the sum to be paid by the father weekly or otherwise, for the child's support, and the sum to be paid for the mother's confinement expenses if she is in indigent circumstances. The father is charged also with the costs of the proceedings, and must give bond for his compliance with the court's order. Failure to pay costs or to execute the required bond subjects the father to imprisonment until the requirements are met. Any breach in the condition of the bond may be prosecuted by the designated authority (secs. 9:17-1 to 9:17-31).

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

The mother of an illegitimate child inherits its intestate estate, both real and personal, in the same manner and to the same extent as if the child had been born in lawful wedlock (secs. 3:3-10, 3:5-7). See Number 27.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The domicile of a married woman is established by the same facts and rules of law as that of any other person for the purposes of voting, office holding, testacy, intestacy, jury service, and taxation (sec. 37:2-3).

In other cases, the general rule is applied that the "domicile of the wife is the domicile of the husband—and she can acquire a separate domicile only by his consent, acquiescence or abandonment or by conduct on his part amounting to a matrimonial offense."¹

¹ *Brown v. Brown* (1933), 112 N. J. Eq. 600, 604; 165 Atl. 643.

31. Public Office—Eligibility of Women.

The right of citizens of the State to hold office or employment is co-extensive with their right to vote, is equal as to all citizens, and cannot be denied or abridged on account of sex or marital status. Such equal rights and privileges extend to all offices, boards, commissions, or other public service in the State and its political subdivisions of whatever nature or kind (R. S. Cum. Supp. 1941-1944, sec. 10: 1-1 as amended).

32. Jury Service—Eligibility of Women.

Women who possess the statutory qualifications required for jury service are eligible to serve as either grand or petit jurors (sec. 2: 85-1).

Exemptions allowed from jury service are available without sex distinction (secs. 2: 86-1 to 2: 86-4).

Special Topics.

Teachers' Equal Pay—Female teachers in the public schools must be paid compensation equal to that paid to male teachers holding similar positions and employments with similar training and terms of service (R. S. Cum. Supp. 1945-1946, sec. 18: 13-10.1).

Women Lawyers—Official Name—A woman lawyer is required on her marriage to file with the clerk of the Supreme Court a sworn statement declaring the form of name she will use for official purposes. (R. S. Cum. Supp. 1941-1944, sec. 2: 21-14).

