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

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REPORT FOR

NORTH CAROLINA

as of January 1, 1957



U.S. WOMEN'S BUREAU BULLETIN 157-32 (Revised)

UNITED STATES DEPARTMENT OF LABOR

JAMES P. MITCHELL, Secretary

WOMEN'S BUREAU

MRS. ALICE K. LEOPOLD, Director

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The report for North Carolina was prepared by Laura H. Dale with the assistance of Laura H. Harris, under the general direction of Alice A. Morrison of the Division of Women's Labor Law and Civil and Political Status of the Women's Bureau, U. S. Department 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, and "natural male dominance." Economic and social advances in the position of women in the United States have brought about marked changes in the laws governing property and family rights and political status.

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 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.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, has been brought up to date as of January 1, 1953. Information in the Summary is compiled from the reports for each of the 48 States and the District of Columbia.

SOURCES

Constitution of North Carolina
General Statutes of North Carolina, 1955
North Carolina Reports
Southeastern Reporter

EXPLANATORY NOTE

This pamphlet, Bulletin 157-32, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of North Carolina. It includes pertinent statutory changes enacted in that State up to January 1, 1957, and supersedes the previous report and addendum for North Carolina.

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

References to the code sections are likewise in parentheses, as "(sec. 31-5)."

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references. Cases showing historical development of a statute or policy are followed by the abbreviation "hist."

Numbered subject headings are the same as those used in the Summary. Cross references employ these numbers for brevity, as "See number 6," which refers to the subject heading "Earnings of a married woman."

NORTH CAROLINA

CIVIL RIGHTS

Contracts and Property

1. Age of majority

The age of majority for men and women is 21 years, by rule of common law, which operates in the absence of express statute.

2. Contractual powers of a minor

Except for necessities or contracts authorized by statute, an infant may avoid his contracts concerning personalty either during his minority or on coming of age, if he acts promptly. On such avoidance, he may recover the consideration paid by him either in money or property, but he must restore the consideration received if he still has it, or return or account for the value of property in which it has been invested, if still under his control and ownership.¹

The deed of an infant is voidable, not void, and if he does not wish to be bound he must repudiate it within a reasonable time after becoming of age. Under the North Carolina decisions this period is fixed at 3 years.²

Minors over age 12 may own shares in building and loan associations, with all the rights and liabilities of an adult in regard to such ownership (sec. 54-18).

Minors may not serve as executors or administrators (sec. 28-8, subsec. 1).

All married persons under the age of 21 years have the same privilege of renouncing dower and curtesy rights and of giving written assent to conveyances of real property as have married persons 21 years old and over (sec. 30-10).

Married women under the age of 21 years may renounce dower rights in the "homesite" as if they were married women of full age (sec. 30-8).

Married women under 21 years of age are authorized and empowered to execute any note, contract, contract of insurance, deed, deed of trust, mortgage, lien of whatever nature, or other instrument with

¹ *Hight v. Harris* (1924), 188 N. C. 328; 124 S. E. 623.

² *Hogan v. Utter* (1918), 175 N. C. 332, 334; 95 S. E. 565.

respect to an estate held or purchased by the entirety or with respect to any transaction involving an estate held or purchased by the entirety, and the same shall be valid and binding (sec. 39-13.2). (See number 14 as to wills.)

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Any resident of the State may select personal property to the value of \$500 and hold it exempt from sale under execution or other final process of court issued for the collection of any debt (Const., art. X, sec. 1) (sec. 1-378).

The earnings of the debtor for personal services, at any time within 60 days next preceding a court order to seize property in satisfaction of a judgment, are exempt if it is shown by the debtor's affidavit or otherwise that these earnings are necessary for the use of a family supported wholly or partly by his labor (sec. 1-362).

The husband may insure his own life for the sole use and benefit of his wife and children, and at his death the proceeds are to be paid over to the wife and children, or guardian for any under age, free from all claims of the husband's representatives or creditors. Nor is the policy subject to claims of the insured's creditors during his life if the insurance was issued for the sole use and benefit of the wife and children, or either of them (Const., art. X, sec. 7).

B. HOMESTEADS

Every homestead, with its dwellings and buildings, not exceeding \$1,000 in value, to be selected by the owner; or instead, at the option of the owner, any lot, with its dwelling and buildings, not exceeding \$1,000 in value, in a city, town, or village, when owned and occupied by any resident of the State, is exempt generally from sale for debt but is subject to sale for payment of taxes or purchase money, or for a laborer's or a mechanic's lien, as provided by law (Const., art. X, secs. 2, 4).

The allotted homestead is exempt as long as it is owned and occupied by the homesteader or by anyone for him, but a valid conveyance of it destroys the exemption as to liens attaching prior to the conveyance. The homesteader who has conveyed his allotted homestead may have another allotted as often as is necessary (sec. 1-370).

"* * * But if the land proposed to be sold is all that the execution debtor has, he is entitled to have his homestead therein laid off to him, although there be no dwelling house or other habitable building

thereon, because he may build a house and other buildings on the land, and thus have the beneficent provision of the Constitution.”³ (This construction as to the homestead right has been applied in behalf of a married woman.⁴)

If the owner of a homestead dies, leaving a widow but no children, the homestead is exempt from the debts of the deceased husband, and the rents and profits from it inure to her benefit during her widowhood, unless she is the owner of a homestead in her own right (Const., art. X, sec. 5). When a person entitled to the homestead exemption dies without having it set apart, and leaves no children, his widow may proceed to have the homestead allotted. If she fails to do so and claim is made against the real estate for debts and charges of administration, the court must appoint appraisers to set a homestead apart for her (sec. 1-389).

No deed of the owner conveying the homestead is valid without the wife's signature and acknowledgment (Const., art. X, sec. 8).

The homestead as defined by the Constitution is distinguishable from the homesite as defined by the statute (sec. 30-8).

The homesite consists of a lot or tract of land which, with the residence and other buildings, must be used or be susceptible of use by the owner as a home for himself and wife. The value is immaterial. No conveyance by the husband of his homesite without the joinder of the wife is valid as against her so long as she lives.

The purpose of the homesite statute is to protect (a) both husband and wife during the wife's lifetime, as the husband is under obligation to maintain a home for both; and (b) the surviving widow of an intestate husband from controversies over allotment of dower in lands to which, except for this statute, he could have conveyed title and possession immediately on delivery of the deed, subject to her dower.⁵

4. Ownership and control of property owned at marriage

The real and personal property of any female in this State acquired before marriage remains her separate property after marriage (Const., art. X, sec. 6) (sec. 52-1). (See also number 9.)

5. Contractual powers of a married woman

No contract between husband and wife made during marriage shall affect any part of the real estate of the wife or the income therefrom from the date of the contract or impair or otherwise change the body or capital of the personal estate of the wife or the income therefrom

³ *McCracken v. Adler* (1887), 98 N. C. 400, 403; 4 S. E. 138.

⁴ *Assurance Society v. Russos* (1936), 210 N. C. 121, 125; 185 S. E. 632.

⁵ *Boyd v. Brooks* (1929), 197 N. C. 644, 649, 650; 150 S. E. 178.

for a period longer than 3 years from date of such contract, unless it is in writing and acknowledged before a certifying officer (sec. 52-12).⁶

A married woman acknowledges her deeds, mortgages, and other instruments as if unmarried (Const., art. X, sec. 8) (sec. 47-14.1).

A married woman can make a valid conveyance of her real estate only with her husband's written assent. A married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her, by herself and her husband, or by her husband (Const., art. X, sec. 6) (sec. 25-06).

Contracts between husband and wife which are not forbidden by the statutory provisions of section 52-12 and not inconsistent with public policy are valid. Any married person and any persons of full age about to be married may release and quitclaim dower, tenancy by the curtesy, and all other rights which they might respectively acquire or may have acquired by marriage in the property of each other (sec. 52-13).

Bank deposits made by or in the name of a married woman may be paid only to her or on her order (sec. 52-3).

A married woman may, in her own name or in the name of a trustee with his assent, "cause to be insured for any definite time the life of her husband, for her sole and separate use, and she may dispose of the interest by will, notwithstanding her coverture" (sec. 52-9).

The indorsement or assignment of a negotiable instrument by "a corporation, an infant, or married woman passes the property therein, notwithstanding that from want of capacity the corporation, infant, or married woman may incur no liability thereon" (sec. 25-37).⁷

The wife alone is liable for her debts, her contracts, and damages from her wrongs arising before marriage (sec. 52-14), and for damages caused by her, or costs or fines incurred in a criminal proceeding against her, after her marriage (sec. 52-15).

Mechanics', laborers', and materialmen's liens are enforceable against the property of a married woman when it is shown that the work or material used on her land was obtained with her consent or procurement (sec. 44-1).

Execution under judgment against a married woman must be levied only upon her separate property (sec. 1-304).

All conveyances of household and kitchen furniture by a married man that are made to secure payment of money or other things of

⁶ *Warren v. Dail* (1915), 170 N. C. 406, 410; 87 S. E. 126 (hist.).

⁷ *Vann v. Edwards* (1901), 128 N. C. 425; 39 S. E. 66 (hist.); (1902), 130 N. C. 70; 40 S. E. 853; (1905), 135 N. C. 661; 47 S. E. 784.

value are void unless his wife joins therein or unless the mortgage or conveyance is executed for purchase money (sec. 45-3).

The dower right of the wife in her husband's real property may not be defeated by the sole conveyance of her husband unless such conveyance is to secure purchase money of the property (sec. 30-6).

A husband whose wife is insane may convey any of his real estate, except his homestead when it has been actually allotted, "free and exempt from the dower rights and all other interests of his wife" without the wife's signature; but the conveyance must have attached to it a certificate under seal from the clerk of the superior court of the county where the wife was adjudged insane, or from the superintendent of an insane institution of the State, or any other State, certifying that she has been so adjudged and that her sanity has not been restored, as provided by law. The conveyance must be executed, probated, and registered as required by statute (sec. 30-9).

A wife may release her dower by joining her husband in the deed of conveyance in the manner required by statute (sec. 30-7).

In general, the husband or widow of an intestate decedent has prior right, on application, to administer the estate (sec. 28-6), but the right may be lost through misconduct (secs. 28-10 through 28-12).

On the marriage of an executrix, if her husband fails to give bond, her letters of administration may be revoked by the clerk of the court on application of any creditor or other party interested in the estate (sec. 28-35, subsec. 2).

No woman may be arrested in any civil action except for a willful injury to person, character, or property (sec. 1-410, subsec. 5).

6. Earnings of a married woman

The earnings of a married woman under any contract for her personal service are her separate property, and she may recover them by suit in her own name (sec. 52-10).

A wife cannot recover compensation for services she has rendered her husband in his business or outside of her domestic duties unless there is a contract, understanding, or intention between them that the wife should receive such compensation.⁸

7. Liability for family support

A husband who willfully abandons his wife without providing her with adequate support or a parent who willfully abandons his natural or adopted child without providing adequate support is guilty of a misdemeanor (sec. 14-322).

⁸ *Dorsett v. Dorsett* (1922), 183 N. C. 354; 111 S. E. 541.

Under the statute enabling married women to contract in general as if unmarried (sec. 52-2), the wife may purchase not only necessities but other articles in her own name and on her own credit, and the creditor may recover from her for them,⁹ but she must have made an express promise to pay for the goods.¹⁰

8. Right of a married woman to engage in a separate business

No formal procedure is required to enable a married woman to engage in her own business and enjoy the profits from it.

9. Rights of a married woman with respect to separate property

All real and personal property of any female acquired before marriage and all such property to which she may become entitled in any manner after marriage is her sole and separate estate and is not liable for any debts, obligations, or engagements of her husband. She may devise and bequeath such property and, with the written assent of her husband, convey real property as if she were unmarried (Const., art. X, sec. 6) (sec. 52-1). The word "conveyed" in the constitutional provision refers only to transfers and alienations of real estate, and a married woman may dispose of her personal property as fully and freely as though unmarried.¹¹

Every conveyance, power of attorney, or other instrument affecting the estate, right, or title of any married woman in "lands, tenements or hereditaments" must be executed by her and her husband and duly acknowledged by each (sec. 39-7).

If the husband is insane, the wife may make a valid sale of her lands under an order of the clerk of the superior court of the county where the land lies, on petition of herself and the husband's guardian (sec. 35-12).

Statutory provision is made for the sale of property owned by a husband who has been adjudged lunatic or insane and committed to an asylum in the State, when his wife is in needy circumstances, provided she was living with him at the time he was committed to the institution (sec. 35-13).

A power of attorney to another to convey the real property of a married woman is valid only if "freely executed by her with her husband" (sec. 39-12) in the manner provided by statute (sec. 39-7).

The husband may not sell or lease his wife's real estate, except with her formal consent as provided by statute. No interest of the husband in such real estate is subject to execution sale for his debts (sec. 52-7).

⁹ *Lipinsky v. Revell* (1914), 167 N. C. 508; 83 S. E. 820.

¹⁰ *Bowen v. Daugherty* (1915), 168 N. C. 242, 245; 84 S. E. 265; Ann. Cas. 1917B, 1161.

¹¹ *Rea v. Rea* (1911), 156 N. C. 529, 532, 533; 72 S. E. 573, 573.

10. Property acquired by joint efforts of husband and wife

In the absence of a statute, the common-law rule is in effect that property acquired during marriage by the cooperative efforts of husband and wife generally belongs to the husband.

When land is conveyed or devised to a husband and wife as such, they take the estate so conveyed or devised as tenants by the entirety. The estate rests upon the doctrine of unity of person, and upon the death of one the whole belongs to the other. Neither husband nor wife can convey during their joint lives so as to bind the other or defeat the right of the survivor to the whole estate. Subject to this limitation, the husband has the same rights in the estate which are incident to his own property.¹²

By private contract joint ownership during the marriage may be created, either in real property by joint deeds or in personal property by joint certificates, joint bank accounts, etc.

11. Damages for injury to person, property, or character

Any damages for personal injuries or other tort sustained by a married woman can be recovered on her suit alone. When recovered, such damages are her sole and separate property as if she were unmarried (sec. 52-10).

12. Damages for injury by spouse to person or property

Either a husband or a wife may have a cause of action against the other to recover damages sustained to person or property (sec. 52-10.1).

13. Competency of husband or wife to testify for or against each other

In general, the husband or wife of any party to a civil action is as competent and compellable to give evidence as any other witness on behalf of such party. This provision does not render any husband or wife competent or compellable to testify for or against the other in any action or proceeding (a) in consequence of adultery; (b) for divorce on account of adultery, except to establish the fact of marriage; or (c) for or on account of criminal conversation (except that in actions of criminal conversation brought by the husband in which the wife's character is assailed, she is competent to testify in refuting such charges). Neither spouse may be compelled to disclose any confidential communication made by one to the other during the marriage (sec. 8-56).

¹² *Bank of Greenville v. Gornito* (1913), 161 N. C. 341; 77 S. E. 222.

In all criminal actions or proceedings, the husband or wife of the defendant is a competent witness for the defendant and is as subject to cross-examination as any other witness. The statute does not make a husband or wife competent or compellable to testify against the other in any criminal action or proceeding, except to prove the fact of marriage in bigamy cases, and except that the wife may be examined in behalf of the State against the husband in criminal prosecutions against him for (a) an assault and battery upon her, (b) abandonment of his family, or (c) neglect to provide for his family's support (sec. 8-57).

The wife is competent to make affidavit and testify in application for peace warrants against the husband (sec. 8-58).

Laws attaching a privilege against disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Support Act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parenthood (sec. 52A-18).

Husband and wife are competent and compellable to testify against each other in a proceeding to prove the fact of marriage in case of criminal cohabitation (sec. 8-57).

14. Right to dispose of separate property by will

No person is deemed capable of disposing of real or personal estate by will until he has attained the age of 21 years (sec. 31-1).

A married woman 21 years of age or over owning real or personal property may dispose of it by will as if unmarried (Const., art. X, sec. 6) (secs. 31-2, 52-8). (See also numbers 9 and 15.)

A decree of absolute divorce revokes any provision in the will of either spouse for the other (sec. 31-5.4).

The birth or adoption of a child after the making of the parent's will does not revoke the will, but the child is entitled to such share of the parent's estate as it would be entitled to if the parent had died intestate unless (a) some provision was made for the child in the will; (b) it is apparent from the will itself that the parent intentionally did not provide for the child (sec. 31-5.5).

15. Inheritance rights in deceased spouse's estate

Real property

Absolute interest

When any person dies intestate leaving none who can claim as heir, but leaving a widow or surviving husband, such widow or husband is to be deemed the decedent's heir, and as such inherits the estate (sec. 29-1, subsec. 8).

Life interest

Dower: A widow is entitled to dower as at common law unless she has forfeited her right by committing adultery and living separate from her husband at his death, or has lost it upon conviction of the felonious slaying of her husband or as an accessory before the fact to such slaying (sec. 30-4).

Under such dower right, the widow of a person dying intestate or a widow who dissents from her husband's will is entitled to an estate for her life in one-third the value of all real property of which her husband was "seized and possessed" at any time during the marriage. This one-third includes the family dwelling and its premises, unless the widow requests otherwise (sec. 30-5).

Neither the dower right nor such real estate as may be willed to the widow by the husband, unless in excess of the portion she would have received as dower, is subject to payment of the husband's debts during her life (sec. 30-3).

Curtesy: Curtesy is a husband's estate for life in all the lands which the wife owned during the marriage, if a child of the marriage was born alive and capable of inheriting such property. When a married woman dies intestate in North Carolina, the surviving husband is entitled to curtesy unless at the time of the wife's death the spouses are legally separated and living apart, the husband has abandoned his wife or maliciously turned her out of doors so that they are living separately, or the husband has separated from his wife and is living in adultery (sec. 52-16).

The wife by her will may deprive her husband of curtesy in her separate estate (Const., art. X, sec. 6) (sec. 52-1). (See number 17 as to widow's dissent from husband's will.)

Personal property

The surplus (above debts and charges) of personal estate not disposed of by the will of a decedent is distributed in the following manner:

To the surviving wife—

1. One-half, if there is only one child.
2. A child's part, if there is more than one child.
3. The entire estate up to \$10,000, if no children survive; the widow is entitled, in addition, to one-half of any amount in excess of \$10,000, and the "next of kin" to the other half.
4. All the personal estate, if there is no child nor legal representative of a deceased child nor "any of the next of kin" of the decedent (sec. 28-149, subsecs. 1, 2, and 3).

In general, advancements to children must be accounted for to the widow of an intestate in determining her "child's part" of the estate (sec. 28-150).

To the surviving husband—

1. One-half, if only one child is living.
2. A child's part, if more than one child or its legal representative survives (sec. 28-149, subsec. 8).
3. The entire personal estate, if there is no child surviving (sec. 28-149, subsec. 9).
4. The husband is entitled to administer his wife's personal estate which she has not bequeathed by will and, subject to claims of her creditors and others having rightful demands against her, to hold such personal property to his own use, unless he has forfeited such rights through divorce or misconduct (secs. 28-10, 28-11). If the husband dies after his wife but before administering her estate, his executor, administrator, or assignee receives the wife's personal property as a part of the estate of the husband, subject to the claims and exceptions recognized by statute as if he were living (sec. 28-7).

Loss of inheritance rights

Husband and wife, respectively, lose, upon absolute divorce: (a) all right to an estate by curtesy or dower, (b) all right to any year's provision or distributive share in the personal property of the other, (c) all right to administer the estate of the other, and (d) every right and estate in the real and personal estate of the other which, by agreement before or after marriage, was settled upon such party in consideration of the marriage only. All of these rights are also lost by either party upon conviction of the felonious slaying of the other or of being accessory before the fact of such slaying (secs. 28-10, 52-19).

A surviving wife is barred from her rights in the estate of her deceased husband if, while he was living, (a) she eloped with an adulterer; (b) she willfully and without just cause abandoned her husband, refused to live with him, and was not living with him at the time of his death; or (c) a divorce from bed and board was granted on the husband's application (secs. 28-11, 52-20).

A surviving husband is barred from his statutory rights in the estate of his deceased wife if, while she was living, (a) he separated from his wife and lived in adultery; (b) he willfully and without just cause abandoned his wife and refused to live with her, "and such conduct on his part was not condoned by her"; or (c) a divorce from bed and board was granted on the wife's application (secs. 28-12, 52-21).

16. Provision for survivors during administration of estate

The widow of an intestate, or of a testator from whose will she has dissented, is entitled to an allowance from her husband's personal estate for the support of herself and her family for 1 year after his death. Such an allowance is in addition to her distributive share of the personal property and is exempt from liens by judgment or execution against the husband's property. She forfeits her right to the allowance and the distributive share through misconduct (sec. 30-15). Unless it is an exceptional case for which other provision is made, the value of a year's allowance to the widow is fixed at \$750 (sec. 30-15).

(See also "Homesteads" under number 3.)

If a parent dies leaving a child under 15 years, including an adopted child, such child is entitled to \$250 for support for the year following the parent's death, in addition to his distributive share (sec. 30-17).

17. Right of husband or wife to disinherit the other by will

A widow may, in the manner prescribed by statute, dissent from her husband's will at any time within 6 months after it is probated (sec. 30-1).

When the widow has filed her dissent as required by law, she has the same rights in the real and personal property of the husband as if he had died intestate (sec. 30-2) (see number 15), except that, if a married man dies testate, leaving a widow but no children, and she dissents from his will, one-half of his personal estate shall be allotted to her and the other one-half distributed according to his will (sec. 28-149, subsec. 3).

No statutory provision is made for the husband's dissent from the wife's will.

Marriage and Divorce**18. Age of consent to marriage**

Unmarried persons of 18 years or over may lawfully marry, if qualified under the statute in all other respects.

A person over 16 and under 18 years of age is permitted to marry only under a special license, issued after the filing of the written consent of one of the person's parents or the person who, as a parent, has charge of him or her (secs. 51-2, 51-8).

Any person who marries a female under 16 is guilty of a misdemeanor (sec. 14-319) unless the girl is between the ages of 12 and 16 years and a special license to marry has been granted; such license may be granted a girl of these years if she is pregnant or has

given birth to a child, or if the father of the child agrees to marry the girl and written consent to the marriage is given by one of her parents, her guardian, or the superintendent of public welfare of the county where either party lives.

Couples resident in North Carolina who marry elsewhere must file a copy of their marriage certificate in the husband's home county within 30 days after their return to the State as residents (sec. 51-2).

19. Common-law marriage

There is no such thing as marriage simply by consent in this State.¹³ " * * * from the earliest period of our legislation, * * * it has been constantly required as an essential requisite of a legal marriage, that it should either be celebrated by some person in a sacred office, or be entered into before someone in a public station and judicial trust."¹⁴

20. Premarital requirements

Each applicant for license to marry must file a certificate, executed within 30 days of its presentation, of a duly licensed physician showing that by the usual methods of examination there is no evidence in the applicant of any venereal disease, tuberculosis in the infectious or communicable stage, uncontrolled epileptic attacks, idiocy, imbecility, mental defectiveness, or unsoundness of mind (sec. 51-9).

Exceptions are permitted as to venereally diseased applicants when prescribed treatment requirements are met, or when necessary to protect the legitimacy of offspring of a pregnant applicant (sec. 51-10).

21. Interstate cooperation in marriage-law enforcement

The general rule is followed that a marriage will be upheld within this State if valid in the State where it is contracted.¹⁵ An exception to this rule is made if such marriage is entered into by residents of North Carolina to evade its laws, and with the intent of returning after marriage to reside in the State.¹⁶

22. Annulment

The law declares absolutely void prohibited interracial marriages (Const., art. XIV, sec. 8) and bigamous marriages (sec. 51-3) without distinction as to sex.¹⁷

¹³ *State v. Wilson* (1897), 121 N. C. 650, 656; 28 S. E. 416 (hist.).

¹⁴ *State v. Samuel* (1836), 19 N. C. 177, 181.

¹⁵ *State v. Ross* (1877), 76 N. C. 242, 245.

¹⁶ *State v. Kennedy* (1877), 76 N. C. 251.

¹⁷ *Watters v. Watters* (1915), 168 N. C. 411; 84 S. E. 703.

Upon application of either party, the court may declare void any marriage violative of the statute (sec. 50-4), as a marriage contracted between a male person under 16 years of age and any female, between a female person under 14 years of age and any male, between forbidden degrees of kinship, or when one party is physically impotent or incapable of contracting from want of will or understanding (sec. 51-3).

A marriage contracted under a representation and belief that the female partner is pregnant, followed by a separation within 45 days which is continuous for 1 year, is voidable, provided no child has been born of the marriage within 10 lunar months from the date of separation (sec. 51-3).

A child born of a voidable or bigamous marriage is legitimate notwithstanding annulment of the marriage (sec. 50-11.1).

23. Divorce

On application of the injured party, an absolute divorce may be granted for adultery, natural impotency, voluntary separation, or involuntary separation for 2 successive years resulting from a criminal act committed prior to divorce proceedings, or the crime against nature. Incurable insanity requiring confinement in a mental institution for at least a 5-year period is made a cause for absolute divorce (sec. 50-5).

The husband may obtain an absolute divorce if the wife, at the time of marriage, was pregnant by another without the husband's knowledge (sec. 50-5).

Either party may obtain an absolute divorce when the husband and wife have lived separate and apart for 2 years, if the plaintiff has resided in the State for 6 months (sec. 50-6).

No person will be allowed to take advantage of his own criminal acts against the other spouse in suing for divorce under this statute.¹⁸

A divorce from bed and board may be granted on the application of the injured party for the defendant's abandonment, cruel or barbarous treatment endangering the plaintiff's life, maliciously turning the plaintiff out of doors, offering such indignities to the person of the plaintiff as to render his or her condition intolerable and life burdensome, or habitual drunkenness (sec. 50-7).

A divorced woman may be authorized by the court to adopt the name of her prior deceased husband, or a name composed of her given name and the surname of a prior deceased husband (sec. 50-12).

After a judgment of divorce from the bonds of matrimony, all rights arising out of marriage shall cease and either party may marry

¹⁸ *Reynolds v. Reynolds* (1935), 208 N. C. 428; 181 S. E. 338.

again, unless the law provides otherwise. However, no judgment of divorce shall render illegitimate any children in being or begotten by the wife during the marriage; and no decree of absolute divorce shall impair the wife's right to receive alimony or other rights provided for her under any judgment or decree of a court rendered before the granting of the absolute divorce, unless the divorce was obtained (a) by personal service on the wife—either within or without the State—upon the grounds of her adultery, or (b) in an action initiated by her for voluntary separation for 2 years (sec. 50-11).

After filing of complaint or granting of divorce, either absolute or from bed and board, the court may make orders respecting the care, custody, tuition and maintenance of minor children of the marriage (secs. 50-13, 50-16).

Alimony and maintenance

During pendency of a divorce suit the court may allow the wife such alimony as seems just and proper, having regard for the circumstances of the parties (sec. 50-15). On granting a divorce from bed and board the court may decree to the party upon whose application judgment was rendered such alimony as circumstances of parties may make necessary, not to exceed one-third of the annual income from the estate, occupation, or labor of the party charged (sec. 50-14). If decree is in favor of the wife she may be granted subsistence and counsel fees, and the court may cause the husband to secure so much of his estate or pay so much of his earnings as may be proper according to his condition and circumstances, having regard also for the separate estate of the wife. In all applications for alimony it is competent for the husband to plead adultery of the wife as a bar. If the issue is found against the wife, the court may not make any order allowing alimony but may permit reasonable counsel fees (sec. 50-16).

Parents and Children

24. Parents' right to services and earnings of a minor child

The father is entitled to the services and earnings of his minor child so long as the child is legally in his custody or under his control and not emancipated.^{19 20} (See also number 25.)

25. Guardianship of a minor child

The father is the natural guardian of his minor children by rule of common law. At the father's death, the mother immediately becomes the natural guardian in the father's stead (sec. 33-3).

¹⁹ *Shipp v. Stage Lines* (1926), 192 N. C. 475, 479; 135 S. E. 339.

²⁰ *Floyd v. Railway Co.* (1914), 167 N. C. 55; 83 S. E. 12.

A guardian of the estate of any minor may be a different person from the one having the tuition and custody of the person of the child (sec. 33-6).

The appointment of the guardian of the estate is a duty of the clerk of the superior court, when application for such appointment has been made, and the choice of the person is a matter for his discretion after careful investigation of the case (secs. 33-5, 33-7).

26. Appointment of testamentary guardian for a minor child

Any father, though himself a minor, may dispose of the custody and tuition of his unmarried infant children, either by deed in his lifetime with the mother's written consent, or by will if the mother is dead.

If the father is dead, has not appointed a guardian, or has willfully abandoned his wife, then the mother has the right to name a guardian by deed or will (sec. 33-2).

27. Inheritance—child

The estate in lands of an intestate person is inherited by his father and mother as tenants in common or by the survivor if only one parent is living, when the decedent leaves no issue capable of inheriting, nor brother, sister, nor issue of them (sec. 29-1, subsec. 6).

The personal property of an intestate person who leaves neither spouse, child, nor issue of a child, is divided equally between the father and mother, or if either is dead, the surviving parent is entitled to the whole of such property (sec. 28-149, subsec. 6).

28. Child born out of wedlock

Any parent who willfully neglects or who refuses to support and maintain his or her illegitimate child under 18 years of age is guilty of a misdemeanor and subject to the penalties provided by statute (sec. 49-2). Prosecution of the mother of an illegitimate child for willful neglect or refusal to support may be instituted at any time before the child attains age 18 (sec. 49-4).

Any mother who willfully abandons her child or children under 18 years of age, whether legitimate or illegitimate, is guilty of a misdemeanor (sec. 14-325).

The court before which a suit is brought for support of an illegitimate child determines whether the defendant is a parent of the child in question. If the defendant is adjudged a parent, and neglect or refusal to support is established, the court must fix by order, subject to modification as later needs require, "a specific sum of money necessary for the support and maintenance of the particular child who is the object of the proceedings. The court in fixing this sum shall take

into account the circumstances of the case, the financial ability to pay and earning capacity of the defendant, and his or her willingness to cooperate for the welfare of the child" (sec. 49-7). At the court's discretion, such an order may require the father to pay the necessary expenses of birth and of suitable medical attention for the mother (sec. 49-8).

When the mother of any child born out of wedlock and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child is deemed to be legitimate (sec. 49-12, subsec. 3).

29. Inheritance—child born out of wedlock

Every illegitimate child of a mother dying intestate, or the issue of such deceased illegitimate child, shall be considered among her next of kin, and as such shall be entitled to a share of her personal property (sec. 28-152(a)). If there is no surviving spouse or child, or any legal representative of a deceased child, then the mother is entitled to all the personal property of such intestate (sec. 28-152(b), subsec. 1).

When any child born out of wedlock shall have been legitimated, such child and his issue shall be entitled by succession or inheritance to real and personal property by, through, and from his father and mother as if such child had been born in lawful wedlock. If any such child dies intestate, his property shall be transmitted to those who would be his heirs in case he had been born in lawful wedlock (secs. 49-11, subsec. 1; 49-12, subsec. 4).

POLITICAL RIGHTS

30. Domicile of a married woman

For purposes of registration and voting, the place where the family of a married man or woman resides is deemed his or her place of residence, unless husband and wife have separated and live apart, in which case the place where he or she resides for the required statutory period is considered his or her residence (sec. 163-25). The residence of a married woman living with her husband is the place where he resides; if she is living separate and apart from her husband, or if he has no legal residence in the State, then her residence is the place where she actually resides (sec. 163-26).

For all other purposes, including probate of her will, the domicile of a married woman is that of her husband, ordinarily, by operation

of law.²¹ But a wife who is forced to leave her husband may acquire a separate domicile.²²

31. Public office—eligibility of women

Women are eligible to hold public office (Const., art. VI, sec. 7) (sec. 12-3, subsec. 13).

32. Jury service—eligibility of women

Women are eligible for jury duty (Const., art. II, secs. 13, 19).

When any woman is summoned to serve on any regular or tales jury, she or her husband may personally certify before the clerk of the superior court that she desires to be excused from jury duty because (a) she is ill and unable to serve, (b) she is needed to care for her children under 12 years of age, or (c) illness of some member of her family requires her presence and attention. The clerk, in his discretion, may excuse the woman from duty and so notify the judge of the superior court when the court convenes (sec. 9-19).

²¹ *In re Ellis* (1924), 187 N. C. 840, 844; 123 S. E. 82.

²² *Rector v. Rector* (1923), 186 N. C. 618, 620; 120 S. E. 195.

