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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  
SOUTH CAROLINA

*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.157-39 (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 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

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, September 8, 1949.*

SIR: I have the honor to transmit to you a revised report on the legal status of women in South Carolina. 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 L. Buchanan, Attorney, aided by Mary L. Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, all of the Bureau staff.

Respectfully submitted. •

FRIEDA S. MILLER, *Director.*

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

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

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## INTRODUCTION

Any conclusion bearing on woman's status under the laws of the United States of America must take into account the common law, on which the fabric of the Nation's jurisprudence is woven.

The common-law rules of property sprang from various causes, notably tradition, military or economic exigency, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

In general, it has been the rule that where specific statutes abrogating common-law principles have not been enacted, the common law applies. In the century just past, many of the old common-law injustices to women have been removed by statute. The largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the cooperative efforts of husband and wife after marriage.

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

## SOUTH CAROLINA

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### SOURCES

Constitution of South Carolina.  
Code of Laws of South Carolina, 1942.  
Session Laws, 1945, 1947, [1948].  
South Carolina Reports.  
Southeastern 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. 17, sec. 9), placed after the related subject matter.

Code section references are likewise in parentheses, thus (sec. 8575).

Session laws are referred to by year of enactment and page number, as (1945, p. 62).

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."

# SOUTH CAROLINA

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

The principles of the common law are effective in this State, unless there has been legislative action repealing or modifying them.<sup>1 2</sup> Accordingly, in the absence of a statutory provision, men and women attain majority at the age of 21 years, by common-law rule.

<sup>1</sup> *O'Hagan v. Fraternal Aid Union* (1928), 144 S. C. 84, 88; 141 S. E. 893; 57 A. L. R. 397.

<sup>2</sup> *State v. Charleston Bridge Co.* (1919), 113 S. C. 116, 125; 101 S. E. 657.

#### 2. Contractual Powers of Minors.

By rule of common law [see Number 1], a minor's contracts and conveyances, in general, are voidable by him within a reasonable time after he attains majority. An exception to the rule is that a minor may be liable on his contracts for necessities. See *Norwood Nat. Bank v. Allston* (1929), 152 S. C. 199, 149 S. E. 593.

A minor over 16 years of age may make a valid note, contract, or other written obligation for a loan for educational purposes to the board of trustees of any educational institution in the State or to the trustees of any educational trust fund in any State, with the written consent of parents or legal guardian (sec. 8673).

Minors may become stockholders and depositors in cooperative credit unions, as defined by statute (secs. 7911, 7925).

A minor wife may renounce dower in real estate by a deed of release (sec. 8579). See Number 15.

No executor may assume the administration of any will or devise unless of the full age of 21 years (sec. 8966).

A minor over 14 years of age may receive, in the discretion of the probate court, his share of a personal estate of \$500 or less to which he becomes entitled, without necessity of formal administration (sec. 9028).

See Number 24 as to payment of wages and Number 14 as to wills.

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

Personal-property and homestead-exemptions statutes are authorized by the Constitution of 1895 [art. 3, sec. 28].

##### Personal Property.

The head of any family residing in the State, whether entitled to a homestead exemption or not, may hold as exempt from

attachment, levy, or sale, personal property to the extent of \$500.

Any person not the head of a family is entitled to an exemption not exceeding in value \$300 in personal property, consisting of necessary wearing apparel and tools and implements of trade (sec. 9090).

#### **Homestead.**

The head of every family residing in the State is entitled to hold exempt a homestead in lands, "whether held in fee or any lesser estate," not exceeding in value \$1,000, with the yearly products from it (sec. 9085).

The right to the exemption may be lost by the claimant's removal from the State, as it is conditioned upon two things: The claimant's status as the head of a family, and actual residence in the State.<sup>1</sup> But the claimant is entitled to the exemption in any land he may own, whether he resides on it or not.<sup>2</sup>

The homestead right may not be waived before the exemption has been assigned by appraisers, except by deed of conveyance or by mortgage of the property, and then only as against the mortgage debt. After the homestead has been set off, and the exemption recorded, a waiver by deed or mortgage or otherwise is valid only if executed by husband and wife, if both are living (sec. 9089).

When the head of a family has not sufficient property to constitute a homestead, the wife is entitled to the exemption from her separate estate. The exemption may not exceed \$1,000 in real estate and \$500 in personal property to husband and wife jointly (sec. 9091). "The head of the family" need not be a husband, or father, or of the masculine gender.<sup>2</sup>

The statutory exemptions do not operate against debts for taxes, purchase-money, improvements or repairs, or against obligations for supplies or advancements used in production of crops on the homestead (sec. 9092).

#### **Rights of Widow.**

The widow and children of a deceased person are entitled to the homestead exemption, as the decedent would be if living (sec. 9088). A childless widow is entitled to the homestead exemption against her husband's creditors, as the surviving member of her husband's family.<sup>3</sup> In such case the property is subject to partition among the heirs at law of the decedent. Division of the property is postponed only during the minority of the youngest child of the decedent.<sup>4</sup> If the widow takes dower in her husband's lands, she does not share in the partition of the homestead set off to her and the children.<sup>5</sup>

#### **Disposition of Homestead by Owner's Will.**

The court has observed that the homestead laws do not affect in any way the statute of wills relative to property in which a testator has not claimed his homestead exemption during his lifetime. In such a case, it is said, the head of a family may by will dispose of his property to persons other than his widow and chil-

dren. If he does, the widow and children could not invoke the homestead exemption, as against his creditors, and thereby have a homestead set off to them in property devised or bequeathed to others.<sup>2</sup>

But it has been held that when a homestead was set off to a decedent during his lifetime and the formal assignment duly recorded as provided by statute, the property could not be disposed of in any manner, whether by deed, mortgage, will, or otherwise, so as to deprive the widow of its use during her lifetime, unless she has joined in its disposition.<sup>3</sup>

#### Insurance.

It should be noted that the legislature made provision for the exemption to a surviving wife, or wife and children, of certain proceeds of insurance on her husband's life, as follows:

When a life insurance policy has been made for the benefit of any married woman, or for herself with her children or her husband's children, whether the policy was procured by the wife or her husband on his life, the proceeds from it are exempt to such beneficiaries from the claims of the husband's representatives or any of his creditors or anyone claiming through them.

However, the amount of the premium paid in any one year on such a policy, insofar as it exceeds \$500, when paid from funds belonging to the husband, is subject to the demands of his creditors (sec. 7985).

But in a bankruptcy proceeding [*In re Cunningham* (1926), 15 Fed. (2d) 700], the Federal District Court held this statute invalid, as in direct conflict with the exemption provision of the 1895 Constitution [art. 3, sec. 28]. This provision limits the exemption allowed the head of a family to a homestead in lands to the value of \$1,000 and personal property to the value of \$500, and further declares that not more than \$1,000 worth of real estate and \$500 worth of personal property may be allowed to husband and wife jointly. The court concluded that the insurance-exemption statute permits an allowance to husband and wife of more than \$500, and that the legislature had exceeded its authority by enacting the law, since the constitutional provision by its terms occupies the whole domain of exemptions.

<sup>1</sup> *Ex parte Morrow* (1937), 183 S. C. 170, 176; 190 S. E. 506; 110 A. L. R. 898.

<sup>2</sup> *Dorn v. Stidham* (1927), 139 S. C. 66; 137 S. E. 331. (Hist.)

<sup>3</sup> *Broughton v. Broughton* (1912), 93 S. C. 26, 29; 75 S. E. 1027.

<sup>4</sup> *Saunders v. Strobel* (1902), 64 S. C. 489; 42 S. E. 429.

<sup>5</sup> *Glover v. Glover* (1895), 45 S. C. 51; 22 S. E. 739.

<sup>6</sup> *Davis v. Milady* (1912), 92 S. C. 135, 145; 75 S. E. 363; Ann. Cas. 1914B, 267.

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

See Number 9.

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

A married woman has the power to contract and be contracted with as though she were unmarried (Const., art. 17, sec. 9). This provision confers on a married woman the power to contract

generally, free from restriction of any kind. It includes the power to contract a partnership with her husband, or others.<sup>1</sup> She has the right to purchase any kind of property in her own name, and to take proper legal conveyances for it. She may bind herself by contract, in the same manner and to the same extent as though she were unmarried, and such contracts may be enforced against her in her own name, apart from her husband. The husband is not liable for the wife's debts contracted before or after marriage, except for necessary support of herself and their minor children living with her (sec. 8575).

A married woman may convey her separate property in the same manner and to the same extent as if she were unmarried. Deeds, mortgages, and legal instruments of whatever kind are executed by a wife in the same manner and with the same effect as if she were unmarried (sec. 8574).

#### Fiduciary Capacities.

The husband or widow of an intestate person is first in order for appointment as administrator of the decedent's estate. But if a widow remarries after such appointment, the probate judge has power to revoke the administration or to join one or more of the husband's next of kin in the administration with her.

If no husband or wife survives the decedent, or the survivor does not apply, the appointment of an administrator will be made by the probate judge from the decedent's relatives in the order named: (1) The children or their legal representatives; (2) the father or mother; (3) the brothers and sisters; (4) such of the next of kindred as may be entitled to a share of the estate, at the court's discretion; (5) the creditors of the decedent, or such other persons as the court may appoint (sec. 8968).

Married women can qualify as administrators, since the execution of an administration bond is a contractual act, and they have the power to contract.<sup>2</sup>

There is no distinction as to sex in statutory provisions for appointment of general guardians. See Number 25 as to parents' rights.

#### Liability for Damages and Costs.

In an action brought by or against a married woman, judgment may be given against her for costs or for damages, or both, in the same manner as against other persons, to be levied and collected from her separate estate and not otherwise (sec. 657, subsec. 5).

An execution may issue against a married woman and direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise (sec. 740). The provisions of this and the preceding section cited are directory merely, and do not prevent a personal judgment against a married woman, in view of her freedom of contract.<sup>3</sup>

When judgment is recovered against a wife, it may be enforced by execution against her separate estate as if she were single.

Neither the husband nor his property can be held liable in such case (sec. 400).

[In the statutes which prescribe the cases wherein arrests may be made under civil actions, it is provided that "no female shall be arrested in any action" (sec. 500, subsec. 4). The constitutionality of this provision was upheld in *Harrison v. Caudle* (1927), 141 S. C. 407, 415, 139 S. E. 842. Another section of the civil code provides:

"No civil or criminal process shall be served on Sunday, except for treason, felony, or breach of the peace. Nor shall any female be arrested in any civil action, except for a willful injury to persons, character or property: *Provided, however,* That civil process in attachment proceedings may be served on Sunday" (sec. 3523).]

<sup>1</sup> *Burwell v. S. C. Tax Commission* (1924), 130 S. C. 199; 126 S. E. 29; 38 A. L. R. 1256.

<sup>2</sup> *Ex parte Nurnberger* (1894), 40 S. C. 334; 18 S. E. 935.

<sup>3</sup> *Clinkscales v. Hall* (1881), 15 S. C. 602.

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

All the earnings and income of a married woman become her separate estate, and the same provisions of law apply to such property as to her other separate estate (sec. 8573). See Number 9 as to separate property provisions and Number 11 as to capacity to sue for recovery of earnings.

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

A married woman has the right to purchase any species of property in her own name, and to bind herself by contract, as if unmarried, and her contracts may be enforced against her in her own name. The husband is not liable for her debts contracted either before or after the marriage except for the necessary support of herself and of their minor children living with her (sec. 8575).

The husband is held responsible for the support of his wife and children, and may be compelled to pay a fair and reasonable sum for the purpose, if possessed of sufficient means or able to earn such means. But where the father of a child is dead or incapable of supporting his child, or cannot be found in the State, the mother becomes likewise liable for the child's support (sec. 256-45).

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

There is no requirement for court decree, record of the husband's consent, or inventory of her separate property when a wife engages in business.

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

The real and personal property which a married woman owns at the time of her marriage, or acquires afterward by gift, grant, inheritance, will, or otherwise, constitutes her separate property,

and she has all the rights incident to such property which an unmarried woman or a man would have (Const., art. 17, sec. 9). Such property is not liable for her husband's debts (sec. 8572). See also Number 5.

**Estates by the Entirety.**

"\* \* \* It would seem that the reason for the peculiar estate known as estate by entirety no longer exists in this State. This view certainly accords best with modern conceptions with respect to the property rights of married women. At least, the separate estate acts should be given the effect to make her tenant in common with her husband in a grant to both, in the absence of any express intention in the deed to convey the whole to the survivor \* \* \*"<sup>1</sup>

<sup>1</sup> *Green v. Cannady* (1907), 77 S. C. 193, 201; 57 S. E. 832.

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

In the absence of a statute establishing a different rule, the common law governs. [See Number 1 for case citations.] By common-law rule, the property acquired during marriage through the combined industry of husband and wife belongs to the husband, unless joint ownership is created by contract or deed.

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

A married woman may sue and be sued as if she were unmarried. When the action is between herself and her husband, she likewise sues or is sued alone (sec. 400).

Every action must be prosecuted in the name of the real party in interest, unless another person is authorized by statute or fiduciary relationship to conduct the suit (secs. 397, 399).

If any person shall utter and publish, either by writing or verbally, any words of and concerning any female, imputing to her a want of chastity, such person is subject to a civil action for damages brought by the female (sec. 8659).

**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 wife has a right to sue her husband for personal torts.<sup>1 2</sup> See Number 11.

<sup>1</sup> *Prosser v. Prosser* (1920), 114 S. C. 45; 102 S. E. 787. (Hist.)

<sup>2</sup> *Pardue v. Pardue* (1932), 167 S. C. 129; 166 S. E. 101.

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

The relation of husband and wife does not disqualify a person as a witness in any trial or inquiry; but neither of the spouses may be compelled to disclose any confidential communication made by one to the other during the marriage (sec. 692, subsecs. 1 and 2). These provisions apply to both civil and criminal actions.<sup>1</sup> The criminal code provides that neither husband nor wife

may be required to disclose "any communication made to each other during their coverture" (sec. 1012).

<sup>1</sup> *State v. Reynolds* (1897), 48 S. C. 384, 387; 26 S. E. 679; 106 A. S. R. 765.

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

Any person owning real property may dispose of it by written will, if he or she is of sound mind and is 21 years of age or over (sec. 8915). See Number 17.

A married woman may dispose of her separate property by will as if she were unmarried (sec. 8574).

Males at 14 and females at 12 years of age may dispose of personal property by will.<sup>1 2</sup>

Any widow may bequeath by will the crop or crops standing or growing on the grounds of her dower, or on other lands planted for her use (sec. 8918).

Lands and personal property purchased or otherwise acquired by any person after the making of his or her will pass under the will, and no person is to be considered as having died intestate with regard to such property (sec. 8910).

<sup>1</sup> *Posey v. Posey* (1848), 3 Strob. 167; Ann. Cas. 1912A, 622.

<sup>2</sup> *Major v. Hunt* (1902), 64 S. C. 97, 100; 41 S. E. 816; Ann. Cas. 1912A, 622.

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

When any person dies without disposing of his property by will, his real and personal estate is distributed, with reference to a surviving husband or wife, in the following manner:

##### ABSOLUTE INTEREST

One-third of the estate, if a child, children, or other lineal descendants are living.

One moiety of the estate, if no child or other lineal descendant survives, but parents, and a brother or sister of the whole blood or the children of any such brother or sister, are living.

One moiety, if no child or other lineal descendant, no brother or sister of the whole blood or children of them, are living, but decedent's parents, or a parent, survive.

One moiety, if no child or other lineal descendant, nor father or mother survive, but a brother or sister of the whole blood, or a lineal descendant of them, be living.

One moiety, if decedent leaves no child or other lineal descendant, no father, mother, brother or sister of the whole blood, but a brother or sister of the half-blood and a child or children of a brother or sister of the whole blood, or either, survives.

One moiety, if no child or other lineal descendant, no father, mother, brother or sister of the whole blood, or child of such brother or sister, or brother or sister of the half-blood, be living, but a lineal ancestor of the decedent survives.

All the estate, if none of the kindred enumerated above survive the deceased spouse (sec. 8906) (1945, p. 313).

## LIFE INTEREST

**Curtesy.**

The husband has no tenancy by curtesy in this State (sec. 8577).

**Dower.**

A widow is entitled to dower as at common law, unless she has an actual jointure from her husband (secs. 8586-8590) or is barred of such right under the statute. She may bar her dower right by taking instead the absolute share of the husband's estate given to her by the statutes of descent and distribution (secs. 8582, 8912).

The right of dower may be forfeited by the wife's having divorced her husband (sec. 8591); by her marriage to another during the lifetime of her husband, whether divorced from him or not (sec. 8594); by willingly leaving her husband and continuing with her *advoutrer* for 5 consecutive years, or by conviction of adultery, unless the husband condones her action or her conviction (sec. 8583); by her voluntary desertion of her husband for 1 year without just cause for complaint, when the desertion has been established in court after opportunity was given the wife for reconciliation (secs. 8584, 8585, as amended, 1948, p. 2076).

If a widow has forfeited her dower, she thereby forfeits her distributory share of her husband's real estate (sec. 8912).

The dower right of a wife who has been adjudged insane may be divested by the probate court to enable the husband to convey or mortgage his real estate, but security is required of the husband for one-sixth of the value of the land for the wife's benefit if she survives her husband (secs. 8597-8602).

**Renunciation of Dower.**

The wife of any grantor conveying real estate, whether she is adult or a minor, may by deed of release renounce and bar herself of her dower in all the property so conveyed, by acknowledging as provided in section 8578 [following], upon a private and separate examination, "that she did freely and voluntarily, without any compulsion, dread or fear of any person whomsoever, renounce, and release her dower to the grantee, and his heirs and assigns, in the premises mentioned" (sec. 8579).

Although she has not executed or acknowledged any deed of conveyance for the purpose, any married woman's relinquishment of her dower in any real estate, when duly acknowledged by her in writing and recorded, is effective in law "to convey and pass away" her dower right (sec. 8578).

**Release by Contract.**

A married woman can contract to release her claim for dower during her husband's lifetime by written agreement and for a valuable consideration.<sup>1 2</sup>

See Number 17 as to election between dower and will.

<sup>1</sup> *Watson v. Watson* (1934), 172 S. C. 362, 365; 174 S. E. 33.

<sup>2</sup> *Tuten v. Almeda Farms* (1937), 184 S. C. 195; 192 S. E. 153.

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

No provision is made by statute for the surviving spouse during the administration of the estate, nor for a family allowance.

By provision of the common law, a widow is entitled to remain in the chief house of her husband for 40 days after his death, within which period her dower should be assigned. But even if dower has not been assigned at the end of her quarantine, when she remains on the land she may become liable as a trespasser.<sup>1 2 3</sup>

### Small Estates.

The judge of probate is empowered to receive and distribute estates in personal property which do not exceed \$500 in value, without formal administration (sec. 9028). This provision for summary administration applies only where creditors of the estate are not concerned, and involving only the distribution of clear assets.<sup>4</sup>

The court has approved the allowance of moderate and reasonable advances for support of the family, where the estate is in good faith thought to be solvent, and such allowance was made before the application of creditors whose demands would make the estate insolvent. See *Darby Estate* (1827), 2 McCord 451 (S. C. Chancery Rep.).

<sup>1</sup> *McCully v. Smith* (1830), 2 Baily 103 (S. C. Law. Rep.).

<sup>2</sup> *Lamar v. Scott* (1851), 4 Rich. 516 (S. C. Law Rep.).

<sup>3</sup> *Cave v. Anderson* (1897), 50 S. C. 293, 300.

<sup>4</sup> *Mitchell v. Dreher* (1929), 150 S. C. 125; 147 S. E. 646.

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

The husband cannot dispose of his wife's dower in his real estate during life, nor can he direct the disposition of it after his death, by will or otherwise. The widow can be deprived of it only by her voluntary consent or her own act. But the husband may make provision for his wife by will, declaring that such provision is made in lieu or bar of dower, and if the wife accepts the legacy she loses dower. Or if he makes provision for her, without expressly declaring, or evidently implying, that the legacy is given in lieu of dower, the widow will receive both dower and legacy. If the will clearly intends that the provision for the widow is not in addition to her dower, she must elect between the two; she cannot take both.<sup>1</sup>

The husband has no curtesy right in his wife's estate (sec. 8577). Nor is provision made by statute for his election against the provision of the wife's will.

<sup>1</sup> *Bomar v. Wilkins* (1930), 154 S. C. 64, 68; 151 S. E. 110; 68 A. L. R. 501.

## II.—MARRIAGE AND DIVORCE

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

No marriage license is to be issued to a female under 14 years of age, or to a male under 18 years. When either party is under

18 years of age, and resides with father, mother, or other relative, or a guardian, license may not be issued until the written consent of such relative or guardian is filed with the probate judge (sec. 8558).

But the common-law rule as to age of consent to marriage has not been changed in the State, and though a marriage may be voidable because of want of age in one of the parties, it can only be declared void in such a case by judicial action when there has been no cohabitation between the contracting parties.<sup>1</sup>

<sup>1</sup> *State v. Sellers* (1926), 140 S. C. 66, 79; 134 S. E. 873.

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

The courts of this State are reluctant to declare a common-law marriage valid unless the proof of such marriage is shown by strong and competent testimony.<sup>1</sup> The facts and circumstances must show an intention on the part of both parties to enter into a marriage contract, and such intention is usually evidenced by a public and unequivocal declaration of the parties, though it may rest in attendant circumstances.<sup>2</sup>

<sup>1</sup> *Ex parte Blizzard* (1937), 185 S. C. 131, 134; 193 S. E. 633.

<sup>2</sup> *Tedder v. Tedder* (1917), 108 S. C. 271, 276; 94 S. E. 19; 2 A. L. R. 438.

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

No certificate of health is required from applicants for license to marry. A 24-hour waiting period is required between filing of the application for license and the issuance of license to marry (1945, p. 62).

Article 8, Regulations of the State board of health for the prevention of the spread of venereal diseases, filed in the office of the secretary of state, April 24, 1942, provides in section 8 as follows:

"It shall be a violation of these regulations for any infected persons knowingly to expose another person to infection with any of the said venereal diseases [enumerated in a preceding section of the regulations], or for any person to perform an act which exposes another person to infection with venereal disease" (sec. 5002).

Violation is made a misdemeanor, and subject to prescribed penalties, by provisions of the original act [1919, page 30, section 6], upon which the regulations are based.

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

There is no statutory provision on this subject, and no case was found in which the point has been decided.

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

The court of common pleas has authority to hear and determine any issue affecting the validity of contracts of marriage, and to declare such contracts void for want of consent of either

of the contracting parties, or for any other cause tending to show the invalidity of the contract at the time it was made unless the parties have confirmed the contract by living together (sec. 8567).

"\* \* \* The marriage status being a matter of the deepest public interest and concern, the trial judge has the power, and it is his duty, to see that such a status is not disturbed except under circumstances and for causes fully sanctioned by law."<sup>1</sup>

Bigamous marriages are declared void by statute (sec. 8568); likewise, prohibited interracial marriages (Const., art. 3, sec. 33) (sec. 8571).

<sup>1</sup> *Fogel v. McDonald* (1931), 159 S. C. 506, 512; 157 S. E. 830.

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

[As of January 1, 1948, the date of this report, divorce was not allowed on any ground. But the Constitution (art. 17, sec. 3) was amended April 1, 1949, to permit absolute divorce on grounds of adultery, desertion, physical cruelty, or habitual drunkenness. Text of the proposed amendment in 1947 Laws, p. 725].

#### Alimony.

The court of equity has jurisdiction to hear and determine cases for alimony. Alimony has been granted on one or more of the following causes:

(1) Where the husband inflicts upon his wife or threatens her with bodily injury in the form of personal violence actually inflicted or menaced, and affecting life or health.

(2) Desertion of the wife by the husband, without just cause.

(3) Where the husband "practices such obscene and revolting indecencies in the family circle, and so outrages all the sentiments of delicacy and refinement, characteristic of the sex, that a modest and pure-minded woman would find these grievances more dreadful and intolerable than the most cruel inflictions upon her person."<sup>1</sup>

<sup>1</sup> *Wise v. Wise* (1901), 60 S. C. 426, 431, 447; 38 S. E. 794. (Hist.)

### III.—PARENTS AND CHILDREN

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

The wife and husband are the joint natural guardians of their minor children and are equally charged with their welfare and education and the care and management of their estates. The wife and husband have equal power, rights, and duties, and neither parent has a paramount right concerning the minor's custody, control of his services or earnings, or any other matter affecting him. Neither parent may forcibly take a child from the guardianship of the parent legally entitled to his custody. The welfare of the minor is the first consideration and the court having jurisdiction must determine all questions concerning guardianship. None of these provisions is to be construed to relieve the father of his common-law obligation to support his children, nor to increase the liability of the mother for such support (sec. 8638).

When any person hires or employs a minor without the consent

of parents or guardian, the employer must pay to the parents or guardian the full value of the minor's labor from the time demand is made for payment of such service. This provision does not apply to cases where a parent or guardian fails or refuses to furnish the minor a home and support. The minor then has the right to make a contract in regard to his own labor and enforce the contract in his own name and for his own benefit. In such cases the employer is liable only to the minor (sec. 8668).

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

See Number 24.

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

When either parent is dead the other may, by deed or will in proper form, dispose of the custody and tuition of his or her unmarried minor child or children, for the period of minority, to any person or persons, as provided by statute. But if both parents are living, no such deed is valid unless signed by the father and mother. This provision is not to interfere with the right and duty of the proper court to transfer and assign at any time the custody of the child for its best interest (sec. 8633).

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

When any person dies intestate, his real and personal property is distributed, as to his father and mother, in the following manner:

If the decedent leaves no lineal descendant, but is survived by husband or wife, brothers and sisters of the whole blood, father and mother, one moiety of the estate is distributed to the parents and brothers and sisters to be divided among them so that each receives an equal share. (The children of a deceased brother or sister of the whole blood take among them the share which their parents would inherit if living.)

When there is no surviving spouse, the entire distributable estate is divided among parents and brothers and sisters of the whole blood and their lineal descendants in the same manner that the law provides as to the portion of the estate given them when there is a surviving husband or wife.

If only the parents and husband or wife survive, one moiety of the estate is distributed to the father and mother; if either parent is dead, such moiety goes to the living parent.

If no issue, husband or wife, nor brother or sister of the whole blood (or child of any deceased brother or sister) survive the decedent, his parents, or the survivor if one is dead, take the whole estate (sec. 8906).

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

When the paternity of a child born out of wedlock has been

determined in the manner prescribed by statute, the adjudged father must give bond, with sureties, in a sum of not less than \$300 nor more than \$1,200, in the discretion of the court, for the annual payment of one-twelfth of the amount of the bond, to maintain the child until it is 12 years of age (sec. 1726). On default, the father is subject to court process to compel payment, "as are defendants convicted of misdemeanors." Such process may be stayed, however, except as to costs, upon the annual payment of such sum of money as the court may direct, not to exceed the maximum amount provided for in section 1726 of the 1942 Code [a possible range of from \$25 to \$100 a year] (sec. 1729).

If the mother refuses to name the father of a child born out of wedlock, when summoned by a magistrate for that purpose, and it appears that the child is likely to become a burden to the county, the magistrate must commit her to jail until she names the father or gives security that the child shall not become a charge of the county in which she resides (sec. 1727).

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

Upon the death within the State of a child born out of wedlock, his mother inherits his real and personal property as if the child had been legitimate (sec. 8913). See Number 27 as to parents' inheritance.

## B.—POLITICAL RIGHTS

### 30. Domicile of Married Women.

" \* \* \* the husband has an absolute right to establish his domicile or place of residence wherever he pleases, either with or without the consent of his wife; and it is equally her duty to go with him or follow to the place of residence chosen by him."<sup>1</sup> This general rule is subject to modification by the husband's failure to provide a proper home for his wife.<sup>2</sup>

<sup>1</sup> *Wise v. Wise* (1901), 60 S. C. 426, 448; 38 S. E. 794. (Hist.)

<sup>2</sup> *State v. Lynch* (1936), 180 S. C. 11; 184 S. E. 153.

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

Every qualified elector is eligible to any elective office, unless disqualified by age, as prescribed in the State Constitution (Const., art. 2, sec. 2).

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

Women are not eligible for jury service (Const., art. 5, sec. 22).<sup>1</sup> Only "qualified male electors" are to be placed on the jury list (sec. 608).

<sup>1</sup> *State v. Mittle* (1922), 120 S. C. 526, 533; 113 S. E. 335.