

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 DAKOTA

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



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UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR RELATIONS
WASHINGTON, D. C.

The Legal Status of Women in the
United States of America

January 1941

THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

In response to continuing domestic and international needs, the Women's Bureau has prepared a revised edition of its 1938 report on the legal status of women in the United States of America.

The revised report is based on an examination of the Constitutions, official statutes, and significant decisions of courts of last resort of the Federal Government and the several States, as well as pertinent law texts of recognized authority.

This pamphlet presents a digest of the material compiled for a single State, which has been incorporated in the complete report.

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, September 28, 1949.

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

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 DAKOTA

SOURCES

Constitution of South Dakota.
South Dakota Code of 1939.
Session Laws, 1939, 1947.
South Dakota Reports.
Northwestern 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. 21, sec. 5), placed after the related subject matter.

Code section references are likewise in parentheses, thus (sec. 178).

Session laws are referred to by year of enactment and page number, as (1939, p. 44).

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 DAKOTA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Males attain their legal majority at the age of 21 years; females, at 18 years (sec. 43.0101).

2. Contractual Powers of Minors.

A minor cannot give a delegation of power, nor, under 18 years of age, make a contract relating to real property, or to personal property not in his immediate possession or control (sec. 43.0103). But he can make any other contract in the same manner as an adult, subject, however, to his disaffirmance in general, and to the statutory marriage provisions (sec. 43.0104). He cannot disaffirm: (1) A valid contract for the reasonable value of necessaries purchased by him when not under the care of a parent or guardian able to provide for him or them (sec. 43.0106); nor (2) a valid obligation incurred by him under an express provision of statute (sec. 43.0107).

In all cases other than those specified in sections 84 and 85 of the statutes, a minor's contracts made before he is 18 years of age may be disaffirmed by him either before his majority or within 1 year afterward, or, if the contracts are made while he is over the age of 18, they may be disaffirmed upon his restoring the consideration to the party from whom it was received or paying its equivalent with interest (sec. 43.0105).

A minor is liable in a civil suit for a wrong done by him (sec. 43.0108).

Minors are incompetent to act as executors (sec. 35.0402) or administrators (sec. 35.0503).

The wages of an employed minor may be paid to him or her until the parent or guardian entitled to the wages gives the employer notice that he claims them (sec. 14.0319).

See Number 14 as to capacity to make a will.

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

Exemptions of a homestead to "all heads of families," and of "a reasonable amount of personal property" are authorized by the Constitution (Const., art. 21, sec. 4).

Three classes of exemptions—(1) absolute, (2) additional, and (3) alternative—are established by statute:

(1) The first includes: All family pictures; a pew or other sitting in any house of worship; a burial plot; the family Bible and all school

books used by the family, and all other books used as a part of the family library, not exceeding \$200 in value; all wearing apparel and clothing of the debtor and his family; 1 year's supply of family provisions; necessary fuel for 1 year; and the homestead, as defined by statute (secs. 51.1801, 51.1802).

(2) In addition to *absolute exemptions*, the debtor, if head of a family, may select from his other personal property an exemption aggregating not more than \$750 in value. This class covers "goods, chattels, merchandise, money or other personal property." If the debtor is a single person, not the head of a family, this exemption is allowed, but limited to \$300 in value (sec. 51.1803).

(3) Instead of *additional exemptions* the debtor, if the head of a family, may select *alternative exemptions* consisting of specific family and household possessions, livestock with necessary food for them, farm implements, or mechanical or professional equipment for earning a livelihood. Statutory limits of maximum total value are set for each class of property (sec. 51.1804).

When Exemptions Do Not Avail.

None of the enumerated exemptions avails against debts for purchase-money, laborers' or mechanics' wages, or material furnished, as prescribed by statute (secs. 51.1707, 51.1807).

No exemptions except those classed "absolute" may be allowed to: (1) A nonresident, (2) a debtor in the act of removing his family from the State, or (3) one who has absconded taking with him his family (sec. 51.1808); nor against a debt for property obtained under false pretenses (sec. 51.1809); nor against penalties, forfeitures, and costs in criminal cases (sec. 51.1810).

Who Entitled to Exemptions.

The homestead "of every family, resident in this State" is declared exempt so long as it continues to possess the character of a homestead (sec. 51.1701). A "family" may be a widow or widower, though without children, continuing to occupy the homestead used as such at the death of the deceased spouse; or any family, consisting of one or more persons in actual occupancy of a statutory homestead (sec. 51.1702).

The owner or the husband or wife may select the homestead, causing boundaries to be marked and a description of them recorded, as provided by statute (secs. 51.1711, 51.1712).

Failure or refusal of a debtor to claim his exemptions within the time set by law, entitles any dependent of his within a limited time to make the claim and act in his stead (sec. 37.4903).

Homestead Defined.

The homestead must embrace the house used as a home by the owner (sec. 51.1708). If it is within a town plot, the area is limited to 1 acre; if rural property, the aggregate area may not exceed 160 acres. Special provisions are made for homestead limits in mineral lands acquired under laws of the United States (secs. 51.1710, 42.0101). In general, a homestead is exempt against the claims of creditors to the extent of \$5,000, above any encumbrances (secs. 51.1802, 37.4909).¹

Conveyance.

Neither husband nor wife can convey or encumber, by his or her sole deed, the homestead owned by either of them when both spouses are residents of the State (sec. 51.1703). Statutory provision is made, however, for conveyance or encumbrance by the separate deed or mortgage of one spouse of his or her title in any real estate, including the homestead, when the other spouse is insane or mentally incompetent (sec. 51.1704).

When Homestead Owner Dies.

Upon the death of the owner of a homestead, the legal title to the property passes to the heirs under the statute or to the person or persons designated by will (sec. 51.1717). See Number 14 as to limits of will. But the right of possession and occupancy of the whole homestead remains in the owner's surviving husband or wife "until it is otherwise disposed of according to law, and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age" (sec. 51.1716). The homestead cannot be partitioned among the heirs so long as it is occupied as a homestead by the surviving husband, wife, or any minor child.²

See Number 16 as to possession of other exempt property on the death of the head of the family.

Insurance.

From the proceeds of insurance on the life of any person resident in the State at the time of his death, who leaves a surviving widow, husband, or minor child or children, any amount not exceeding \$5,000 is exempt to the use of such surviving spouse, child or children, though the policy is payable to the order of the insured, or to the order of his assigns, estate, executor, or administrator, provided it has not been assigned to another person. The \$5,000 so exempted is not subject to the payment of any debt of the insured, or of the surviving widow, husband, minor child or children (sec. 51.1805).

The provisions of the statute which set apart insurance proceeds to the extent of \$5,000 for the surviving husband, widow, or children apply whether or not such beneficiaries are residents of the State, since the statute affects distribution of property as well as exemption.³

¹ *Peck v. Peck* (1927), 51 S. D. 157, 165; 212 N. W. 872.

² *Wells v. Succeny* (1903), 16 S. D. 489, 495; 94 N. W. 394; 102 A. S. R. 713.

³ *In re Babcock's Estate* (1936), 64 S. D. 283, 290; 266 N. W. 420.

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

The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, is her separate property and is not liable for the debts of her husband (Const., art. 21, sec. 5). See also Number 9.

5. Contractual Powers of Married Women.

The wife retains after marriage all the civil and property rights of a single woman. She may buy and sell, receive and convey, will, or

otherwise dispose of any real or personal property belonging to her, or in which she may have an interest, without joining the name of her husband, except as provided in the case of a homestead [see Number 3] (secs. 14.0207, 14.0204).

Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried. But in transactions between husband and wife, the general rules apply which govern confidential relationships, as prescribed by law (sec. 14.0202).

In holding that a married woman was liable under this statute on a promissory note, executed by her with her husband for his individual debt, the court said:

"* * * It will be observed that the language of this section is broad and comprehensive, and includes the authority to enter into any engagement or transaction with any person which an unmarried woman might enter into, limited only by the provision that the contract must be 'respecting property,' and the limitation as to contracts between husband and wife. * * * we are of the opinion that it was the intention of the legislature to give to married women full authority to enter into any and all contracts respecting property, and to remove their common-law disability as to their power to contract obligations binding upon them, and that their authority to enter into a contract is not dependent upon the existence or nonexistence of separate property."¹

A husband and wife may hold real or personal property together, as joint tenants, or tenants in common (sec. 14.0204). A conveyance or other instrument, executed by a married woman, has the same effect as if she were unmarried, and may be acknowledged in the same manner (sec. 51.1624).

The husband's separate property is not liable for the debts of the wife contracted before marriage; but the wife's separate property is liable for her own debts, contracted before or after marriage (sec. 14.0206).

Husband and wife cannot alter their legal relations by any contract with each other, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation (sec. 14.0202).

Fiduciary Capacities.

Marriage does not disqualify a woman from serving as administratrix (sec. 35.0504) nor as executrix (sec. 35.0404). The surviving husband or wife, or some competent person he or she selects, is given preference for appointment as administrator of the estate of a person dying intestate (sec. 35.0501). But among several persons claiming and equally entitled to administer upon an estate, males must be preferred to females, and relatives of the whole blood to those of the half blood (sec. 35.0501 (10)). See Number 25 as to guardianship of minors.

Liability to Arrest in Civil Cases.

After enumeration of the various civil actions in which a defendant may be arrested, the statute provides: "But no females shall be

arrested in any action, except for willful injury to person, character, or property" (sec. 37.2502 (10)).

¹ *Colonial & U. S. Mortgage Co. v. Bradley* (1893), 4 S. D. 158; 55 N. W. 1108.

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

The wife retains after marriage all the civil and property rights of a single woman (sec. 14.0207). The earnings of the wife are not liable for the debts of the husband, and the earnings and accumulations of the wife, and of her minor children living with her or in her custody while she is living separate from her husband, are her separate property (sec. 14.0206). See Number 11 as to right to sue, in general. See also Number 4, as to constitutional right to separate property.

7. Liability of Married Woman for Family Necessaries.

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 14.0201). The husband must support himself and his wife out of his property or by his labor. The wife must support the husband out of her separate property, when he has not deserted her, has no separate property, and is unable from infirmity to support himself (sec. 14.0209).

The husband is not bound to support his wife if she has abandoned him without cause, or lives separately from him by agreement without provision for support (sec. 14.0211).

In general, every husband and wife is jointly and severally liable for the purchase price of necessaries, consisting of food, clothing, and fuel purchased by either of them for their family while they are living together as husband and wife (sec. 14.0206).

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

There is no statute requiring decree of a court or formal consent of the husband to enable a married woman to engage in a separate business. See Numbers 5 and 9 as to contracts and separate property.

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

Except for mutual obligations of support imposed by statute, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling (sec. 14.0203). The wife may convey her separate property without her husband's consent. If she chooses, she may prepare a formal inventory of her separate personal property and record it in the office of the register of deeds in the county of her residence. The filing of the inventory is notice, and evidence in the wife's favor, of her title in the property (sec. 14.0204). [In a case where the wife sued for the recovery of property claimed by her which had been taken in mortgage foreclosure as that of her husband, it was held that she could recover despite the fact that she had not filed an inventory as provided in the statute. The court said that while a married woman may file such an

inventory, she is not bound to do so, and by a failure to file it she only subjects herself to the burden of proving her ownership in the same manner as other persons.^{1]}

The separate property of the wife, which includes her earnings and accumulations, is not liable for the debts of her husband (sec. 14.0206). See also Numbers 4 and 5.

When a husband or wife abandons the other spouse, removing from the State and remaining away for 1 year or more, or is sentenced to imprisonment for 1 year or more, or becomes insane and is committed to the hospital for the insane, and such spouse is without means of support, a judicial proceeding is available, under which the court may empower the applicant or some other suitable person to manage, control, sell, or encumber the property of such offending, imprisoned, or insane person in order to provide suitably for his or her spouse and minor children during the period of abandonment, imprisonment, or insanity (sec. 14.0205).

¹ *Anderson v. Medbery* (1902), 16 S. D. 324, 328; 92 N. W. 1089.

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

In general, the common-law rule governs, that property acquired during the marriage by the cooperative efforts of husband and wife, belongs to the husband as the head of the family and the person charged primarily with its support. However, joint ownership may be created by private arrangement, such as joint deeds or joint bank accounts which clearly show that a joint ownership is created. See section 14.0204.

[A case which illustrates the application of this rule is *In re Lower's Estate* (1925), 48 S. D. 173, 175, 183; 203 N. W. 312. The decedent husband had deposited sums in two banks and certificates of deposit for the funds were issued "payable to the order of himself or Mrs. W. H. Lower" and "payable to the order of self or Mrs. W. H. Lower," respectively. The husband explained as his reason for the arrangement that the wife had helped to earn the money and it belonged to her as much as to him, therefore he wanted things fixed so that if anything happened to him she could get the money. The certificates were left in the banks for safe keeping and were never delivered actually to the wife until after the husband's death, when she cashed them and re-deposited the funds in her own name. In a contest over the funds, the Supreme Court held (but not without a vigorous dissent from one member) that the wife never had any title or right to the possession of the certificates, and that she was compelled to account to the administrator for the proceeds as belonging to her husband's estate.]

But note Homestead provisions, Numbers 3 and 16.

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

A married woman may sue in her own name, without joining her husband as party plaintiff, for any injury to her reputation, person, or property. In like manner, actions founded upon her separate contracts or torts or relating to her individual property may be brought

against her without joining the husband as party defendant (sec. 14.0207).

Neither husband nor wife, as such, is answerable for the acts of the other (sec. 14.0206). See Number 5 as to liability on contracts.

It is the established law of the State that the wife, independent of any statute, has a cause of action against any one wrongfully interfering with the marital relationship.^{1,2} [Her status thus is recognized as identical with that of the husband in protection of this right.]

¹ *Moberg v. Scott* (1917), 38 S. D. 422, 429, 431; 161 N. W. 998; L. R. A. 1917D 732. (Hist.)

² *Holmstrom v. Wall* (1936), 64 S. D. 467, 469; 268 N. W. 423.

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.

No authority has been found expressly changing the rule of the common law that no right of action can exist between husband and wife for a tort committed upon the person of one by the other.

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

The general rule of the statute is that neither husband nor wife can testify for or against the other without the other's consent,¹ but in civil actions between themselves, or in criminal actions for crimes committed by one upon the other, as designated by law, either is a competent witness without the consent of the other (sec. 36.0101).

¹ *State v. Burt* (1903), 17 S. D. 7; 94 N. W. 409; 106 A. S. R. 759.

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

Subject to right of occupancy of a homestead, every person over the age of 18 years, of sound mind, may by last will dispose of all his estate, real and personal (sec. 56.0202).

An unmarried woman's will is revoked by a subsequent marriage and is not revived by the death of her husband (sec. 56.0224). Marriage of a single man revokes his will if no provision is made for his wife by contract or the will, or the will shows that he did not intend to make provision for her (sec. 56.0223).

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

When any person having title to any estate not otherwise limited by marriage contract dies without disposing of the property by will, the portion subject to distribution after payment of debts is succeeded to by a surviving spouse in the following manner:

Absolute Interest.

When one child or its lawful issue survives, decedent's husband or wife takes an equal share with such child or its issue.

When more than one child is living, or one child and the lawful issue of one or more deceased children, or no child but only lineal descendants, the spouse takes one-third.

When no issue survive, and the estate does not exceed \$20,000 in value, all of it goes to a surviving husband or wife; but if the estate exceeds \$20,000, the living spouse takes the first \$20,000 and one-half the remainder, when decedent is survived by parent, brother, sister or issue of deceased brother or sister.

When decedent leaves no issue, nor parent, nor brother or sister, the whole estate goes to the surviving husband or wife (sec. 56.0104).

See Number 27 as to share of decedent's parents.

Life Interest.

Dower and curtesy are abolished (secs. 14.0206, 56.0103).

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

Upon the death of any husband or wife or head of a family, having selected or being entitled to select a homestead as provided by law, the survivor or survivors of such homestead claimant who are legally entitled to the right, may continue to have exclusive possession of the statutory homestead until it is otherwise disposed of, and of its rents and profits. In addition, specific personal property, enumerated in the statute, including all wearing apparel and clothing of the decedent and family, 1 year's supply of family provisions, and household furnishings up to \$150 in value, is to be delivered immediately to the surviving spouse and children, and is not liable for any prior debts or claims whatever (sec. 35.1302).

An additional allowance of \$750 in money or personal property is to be made and set apart to the surviving spouse or minor child or children, subject only to expenses of the decedent's last illness, funeral charges, and administration expenses if no other assets are available.

If the person died intestate and the estate consists only of personal property, the County Court must assign money or property up to \$1,500 in value, for the use and support of his widow, or widow and minor children after payment of expenses for decedent's last illness and funeral, together with administration costs (sec. 35.1303).

Besides these specific provisions the county court is authorized, in its discretion, to order reasonable further allowance from the estate, when necessary for maintenance of the family, under conditions prescribed by the statute subject only to prior payment of funeral and administration expenses (sec. 35.1304).

When personal property is set apart for the use of the family, in accordance with the statute, it becomes the property of the surviving spouse, if decedent left no minor children. If a minor child survives, the spouse receives one-half the property; if more than one minor child, the spouse receives one-third (sec. 35.1305).

Exception Under Family Allowances.

If the surviving spouse has a maintenance from his or her own property equal to the portion set apart by law he or she is allowed only the spouse's right in the homestead (sec. 35.1306).

Summary Administration.

When a person has died, testate or intestate, survived by a spouse, or minor child or children leaving in a county an estate composed of

personal property not exceeding \$750 in value and a homestead, as defined by law, not exceeding \$5,000 in value, regular administration may be dispensed with under court order and immediate settlement of the estate effected, as provided by statute (sec. 35.0701).

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

No statute has been found giving either husband or wife the right of election between provisions made for him or her by the will of a deceased spouse and the share passing to the surviving spouse under the statute governing intestate estates. It should be noted that life possession and occupancy of the homestead, and general allowances of exempt property, including insurance, are preserved to a surviving spouse and minor children, if any. See Numbers 3, 14, and 16.

II.—MARRIAGE AND DIVORCE

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

Any unmarried male of the age of 18 years or upwards, and any unmarried female of the age of 15 years or upwards, and not otherwise disqualified, are capable of consenting to and consummating a marriage (sec. 14.0109).

License to marry may not be issued in any case where either party is under the age necessary to render the marriage absolutely valid, nor where either party is a minor unless the parent or guardian of the minor consent in writing, duly acknowledged or proved (secs. 14.0112–14.0113).

But the statutory requirements as to the consent of the parents to the issuance of a marriage license where the parties are minors are only directory and do not affect the validity of the marriage.¹

¹ *Lessert v. Lessert* (1935), 64 S. D. 3, 5; 263 N. W. 559.

19. Validity of Common-Law Marriage.

Common-law marriages can exist under the laws of this State.¹ But certain requisites are necessary to constitute such marriages. There must be an understanding in the present tense that the parties are husband and wife; they must at once, and in good faith, assume the marriage relation with the intent to continue it during the remainder of their lives. Both parties must in good faith believe and understand that they are in fact and in law husband and wife. No mere illicit or adulterous intercourse, even with the intent to become legally married at some future time, is sufficient.² The law presumes that relations which were illicit in their beginning continue so.³ [It is significant that in none of the three cases cited was the claim of a common-law marriage established from the proof.]

¹ *Svendsen v. Svendsen* (1916), 37 S. D. 353, 368; 158 N. W. 410. (Hist.)

² *Bracken v. Bracken* (1922), 45 S. D. 430, 433; 188 N. W. 46.

³ *Agnew v. Agnew* (1931), 58 S. D. 164, 171; 235 N. W. 644.

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

All persons applying for license to marry must file a certificate of a physician, which shows that within the 20 days prior to the appli-

cation thorough physical examination and standard laboratory tests have been made for discovery of syphilis. License may not be issued unless the certificate indicates either the absence of the disease, or if present, that it will not become communicable. Exception to this requirement is allowed only on physician's affidavit that pregnancy exists (1939, p. 44).

21. Interstate Cooperation in Marriage Law Enforcement.

All marriages contracted outside the State which would be valid by the laws of the country where contracted are valid in this State (sec. 14.0103).

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

Annulment of marriage may be granted if at the time of the marriage: (1) The party seeking annulment was under the age of legal consent to marry and married without consent of parent or guardian; (2) either party had a living spouse of a former undissolved marriage; (3) either party was of unsound mind; (4) consent of either was obtained by fraud, or (5) by force; or (6) either party was physically incapable of entering into the marriage state and appears incurable. A decree of annulment will not be granted under causes (1), (3), (4), or (5) when the parties have freely cohabited as husband and wife after the disability, delusion by fraud, or restraint by force has been removed (sec. 14.0601).

"* * * The power of the court to annul a marriage is only by virtue of the statute."¹

¹ *Lessert v. Lessert* (1935), 64 S. D. 3, 8; 263 N. W. 559.

23. Grounds for Divorce—Respective Availability to Spouses.

Divorce may be granted on any of the following grounds: Adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction of felony, or incurable insanity of at least 5 years' duration (sec. 14.0703).

III.—PARENTS AND CHILDREN

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

The father and mother of a legitimate unmarried minor child are equally entitled to its custody, service, and earnings. If either the father or mother be dead, or refuses to take the custody, or has abandoned his or her family, the other is entitled to its custody, service, and earnings (sec. 14.0303). The parent entitled to the custody of a child must give it support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability (sec. 14.0310).

The mother of an illegitimate unmarried minor is entitled to its custody, service, and earnings (sec. 14.0304).

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

A general guardian is a guardian of the person, or of all the property of the ward within the State, or of both (sec. 14.0501).

In awarding the custody of a minor, or in appointing a general guardian, the court is to consider the best interests of the child, in respect to its temporal, mental, and moral welfare, and if the child is of sufficient age to form an intelligent preference, such preference will be considered in the selection of the guardian. As between parents adversely claiming the custody or guardianship, neither is entitled to it as of right, but, other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father (sec. 14.0505). A parent has preference for appointment as guardian of his or her minor child (sec. 14.0506).

The parent, as such, has no control over the property of the child (sec. 14.0318). No person, whether parent or otherwise, has any power as guardian of property, except by appointment as provided by statute (sec. 14.0504).

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

A guardian of the person or estate, or of both, of a minor child may be appointed by will or by deed, to take effect upon the death of the parent appointing. The father of a legitimate child may make such an appointment, with the written consent of the mother; or either parent may so appoint a guardian if the other is dead or incapable of consent.

The mother of an illegitimate child may appoint a guardian for it by deed or will (sec. 14.0502).

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

When a person dies intestate, his parents share in his distributable estate in the following manner:

If the estate exceeds \$20,000, and the decedent left no issue, but a husband or wife survives, one-half the excess above \$20,000 goes to the decedent's father and mother in equal shares, and if either is dead, the survivor takes the portions of both parents. If the decedent left no issue nor husband nor wife, the estate goes to his father and mother in equal shares, or the whole to the surviving parent (sec. 56.0104). See Number 15 as to share of husband or wife.

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

The parents of a child born out of wedlock and not legitimated owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses.

The obligation of the parent to support the child under the laws for support of poor relatives applies to children born out of wedlock.

The father is also liable to pay the expenses of the mother's pregnancy and confinement.

When the child's paternity has been determined, the court will give judgment so declaring, and order support from the father in annual amounts, equal or varying, in the court's discretion, to be paid until the child is 16 years of age. Payments are to be made at periods or intervals fixed by the court. The order may provide also for necessary birth expenses incurred by or for the mother.

Security is required for performance of the court's order, with provision for enforcement on default.

When the father does not have custody of the child, but paternity has been established or acknowledged as provided by statute, his failure, without lawful excuse, to support the child will be deemed a misdemeanor, subject to fine, or imprisonment, or both. Failure of either parent to support the child when in his or her custody is governed by the laws applicable to failure to support a legitimate child (secs. 37.2101-37.2128).

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

When an illegitimate child, not acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother or, if she is dead, to her heirs at law (sec. 56.0106).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

In general, the domicile of the husband is the domicile of the wife, by rule of common law. But by provision of statute (sec. 160), this rule does not apply where the parties have separated, and an action for divorce is pending. "* * *" It is the modern law that a wife lawfully living apart from her husband by reason of his wrongful conduct may, and ordinarily will, acquire a separate domicile for all purposes."¹

¹ *In re Babcock's Estate* (1936), 64 S. D. 283, 286, 287; 266 N. W. 420.

31. Public Office—Eligibility of Women.

No constitutional or statutory provision has been found which precludes women from public office.

32. Jury Service—Eligibility of Women.

Women are eligible for service as members of grand or trial juries on the same basis as men, and are subject to the same exemptions (sec. 32.1001, as amended 1947, p. 198).