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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
VERMONT

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. 157-44 (Revised)

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DEPARTMENT OF LABOR
BUREAU OF LABOR RELATIONS

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, June 2, 1949.

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

VERMONT

SOURCES

Constitution of Vermont.
1947 Revision of Vermont Statutes.
Vermont Reports.
Atlantic Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of chapter and section numbers following the abbreviation Const., as (Const., ch. 1, art. 4), placed after the related subject matter.

Code section references are likewise in parentheses, thus (sec. 3074).

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."

VERMONT

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Persons are considered of age at 21 years, and are minors until they attain that age (sec. 21). See also Constitution, chapter 1, article 1. For age of consent to marriage see Number 18.

2. Contractual Powers of Minors.

A minor is bound to pay a reasonable price for necessaries sold and delivered to him, such necessaries being goods suitable to the infant's condition in life and his actual requirements at the time of delivery (sec. 7855).

Every personal contract to which an infant is a party, if not entered into for necessaries which he has actually received, may be avoided by him, whether fully executed or not, unless he has confirmed such contract by his acts or words after arriving at the age of 21 years.¹

A deed executed and delivered by an infant, conveying land, remains good and valid until it is avoided by him. As he alone has the power of avoiding the deed and rescinding the contract, he is bound, in reason and justice, after he comes of age and is competent to exercise a discretion upon the subject, to make his election and give notice of his intention. Unless he makes known his determination in a reasonable time, it is just that the contract should become absolute against him.² See application of this principle in *Spencer v. Lyman Falls Power Co.* (1938), 109 Vt. 294, 196 Atl. 276.

The marriage of a female minor under guardianship discharges her guardian from all right to her custody and education, but not from his right to her property (sec. 3378).

A minor may hold shares of stock in cooperative savings and loan associations in his own name and under his own control (sec. 8954).

A minor may draw bank deposits credited and due to him, in the discretion of the trustees of the bank (sec. 8781). Bank deposits to the credit of a minor, earned by or belonging to him, are exempt from trustee process (sec. 8782).

The earnings of a minor are exempt from trustee process in an action against a parent of such minor (sec. 1808. VI).

See Number 14 as to wills.

¹ *Abell v. Warren* (1832), 4 Vt. 149, 154.

² *Bigelow v. Kinney* (1830), 3 Vt. 353, 359; 21 Am. Dec. 589.

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

Personal Property.

A debtor may hold exempt from execution for debt any or all of the various articles of personal property enumerated in the statute, and according to the limits of value there specified. The exemption includes among other items: "Such suitable apparel, bedding, tools, arms and articles of household furniture, as may be necessary for sustaining life; one sewing machine kept for use;" foodstuffs, fuel, livestock and provisions for it through one winter, mechanical or professional equipment as designated, for use in earning a living. Personal property is not exempt from debts for purchase-price, or for material or labor expended on it (sec. 2303).

Accumulations upon shares in a cooperative savings and loan association held by any person are exempt to the amount of \$1,000 (sec. 8955).

Wages or compensation due to a person for his work or labor performed before service of the trustee process on the employer are exempt to the amount of \$10 (sec. 1808. V).

Insurance.

A sum payable to a policyholder for loss by fire of property exempt from attachment and execution is likewise exempt in the hands of the insurance company against the policy holder's debts. Nor is a life-insurance company subject to trustee process on funds in its hands not exceeding \$500 due or payable under a policy of life insurance (sec. 1808. I, II).

A policy of insurance on the life of a person expressed to be for the benefit of a married woman, whether effected by herself, her husband, or by a third person in her behalf, inures to her separate use and benefit and that of her children. Neither the husband, nor the person whose life is insured, nor any creditor or representative of either of these, has any right, title, or interest in such policy or the benefits from it (sec. 3177).

Homestead.

The homestead of "a natural person" consisting of a dwelling house, outbuildings, and the land used in connection with them, valued at not more than \$1,000, owned and used or kept by such person as a homestead, together with the rents, issues, profits, and products from it, is exempt, in general, from attachment and execution (sec. 2610).

The homestead is subject to levy of execution on causes of action existing at the time the homestead is acquired (sec. 2616); for taxes assessed against it (sec. 2617); for material and labor expended on the property (secs. 2754-2755, 2760-2761); and for maintenance of division fences between the property and adjoining lands (sec. 3903).

If the owner of a homestead is a married person, both husband and wife must join in any conveyance of the property, except a mortgage given for the purchase-money at the time the homestead is acquired (sec. 2619).

Statutory provision is made for conveyance of the homestead when the spouse owning the property is under guardianship (sec. 2625), or

when the owner's husband or wife is insane (sec. 2626); and for protection of funds for the best interest of all concerned (secs. 2627-2630).

On the death of the owner the statutory homestead passes to and vests in the surviving spouse, free from debts of the decedent unless such debts were legally charged against it in the owner's lifetime (sec. 2614). But if there are minor children living, the homestead right of the surviving spouse may be lost through his or her fault in not residing at the homestead together with the deceased spouse for the 2 years immediately prior to decedent's death, or through leaving the homestead so that his or her whereabouts cannot be found after diligent search of the estate's representatives (sec. 2615).

The homestead right of the surviving spouse cannot be destroyed by the will of the deceased owner.¹

¹In *re O'Rourke's Estate* (1934), 106 Vt. 327, 331; 175 Atl. 24 (Hist.).

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

See Number 9.

5. Contractual Powers of Married Women.

A married woman may make contracts with any person other than her husband, and bind herself and her separate property as if she were unmarried. She may sue and be sued as to all such contracts made by her, either before or during marriage, without the joinder of her husband, and execution may issue against her and be levied on her sole and separate goods, chattels, and estate. A married woman may become a general or limited partner in a business in which her husband also is a partner, and may contract with him for that purpose, and be a partner with him (sec. 3162). Under this statute, a wife is liable on her surety contract for her husband.¹

Insurance.

A policy of insurance issued within the State on the life of a husband for the benefit of his wife, whether taken out by the husband or the wife, may be assigned by the wife with the husband's written consent (sec. 3175). A woman may cause to be insured, for her sole use, the life of her father or brother, for a definite period or during his lifetime (sec. 3178).

Fiduciary Capacities.

A married woman may serve as executrix, administratrix, guardian, or trustee. The marriage of a single woman does not affect her authority to act in any such capacity under a previous appointment (secs. 2862, 3163, 3377).

Under the statute authorizing the guardianship of spendthrifts, insane and absconding persons, a married woman is eligible for appointment as such guardian, whether of her husband or any other person, and upon appointment has the same rights, powers, and privileges, and is subject to the same liabilities, as if unmarried (sec. 3320).

The surviving husband or widow has preference for appointment as administrator of the estate of a deceased spouse. Unless a widow applies for administration, or requests that it be granted to some other person, within 30 days after the husband's death, administration may

be granted to one or more principal creditors, if qualified (sec. 2848). See Number 9 as to control of real property.

¹ *McNamara v. Pickett* (1938), 109 Vt. 500; 1 Atl. (2d) 716.

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

See Number 9.

7. Liability of Married Woman for Family Necessaries.

While it is the husband's duty to supply necessaries for his family, and he is liable for such necessaries when supplied upon the credit of that duty, a creditor may choose to ignore such credit, and supply the necessaries upon the credit of some other person, who may be the wife.¹ Under the statute, she is free to contract with any person except her husband, and is liable on her contracts (sec. 3162).

Any parent who, without lawful excuse, deserts, or willfully neglects or refuses to provide for the support and maintenance of his child is liable to criminal prosecution, with penalty on conviction of imprisonment or fine or both (sec. 3180). A wife who is supporting her husband is liable for the payment of a poll tax, an old-age-assistance tax, or a flood tax assessed against him. A husband living with or supporting his wife is liable for such taxes assessed against her. Payment of these taxes is required to qualify citizens for voting in town meeting (secs. 811, 3499).

See Number 9 as to liability of a wife's separate property for necessaries.

¹ *Carter v. Howard* (1866), 39 Vt. 106.

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

No formal proceeding, such as a decree of court, to establish a married woman as a sole, or free, trader is required by statute. See Number 5, as to contracts.

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

All personal property and rights of action acquired by a woman before or after marriage, except by gift from her husband, are her separate property. Neither such property nor the rents, issues, income, and products from it is subject to her husband's control or liable for his debts. It is specifically provided that this statute does not authorize a claim by either husband or wife against the other for personal services (secs. 3166, 3168).

[The statute in its present form first appears in Vermont Statutes of 1894, as section 2647. The latest legislative act on the subject of a married woman's separate personal property, before the official revision of 1894, was to strike from the law the words "by her personal industry or," leaving as the sole exception, gifts which the wife receives from her husband, thereby apparently including her personal earnings in her separate property (Session Laws 1888, No. 84). Yet the Supreme Court of Vermont in 1904 (*Monahan v. Monahan*, 77 Vt. 133, 138, 59 Atl. 169, 70 L. R. A. 935), held that money earned by the personal industry of the wife outside her home in 1889 and 1891 be-

longed to her husband, in the absence of an agreement between the spouses that it should be hers. This ruling has been approved in principle in later cases, as in *Roberts v. Hughes* (1912), 86 Vt. 76, 102, 83 Atl. 807; *Dunn v. Williams* (1935), 107 Vt. 447, 181 Atl. 131. However, note exemption of wife's earnings from husband's debts, covered later in this topic.]

Notwithstanding the exception in the statute as to gifts of personalty by the husband to the wife, a husband may confer upon his wife full title to personal property by sale, gift, or waiver of his marital rights, unless the transaction is subject to action by creditors on the ground of fraud.¹

Ownership and Control of Real Estate.

A married woman may convey or mortgage by her separate deed the real estate of which she is seized in her own right "to her sole and separate use," as if she were unmarried. She may, by her sole deed, convey or mortgage and may manage and control any other real estate acquired by her on or after February 13, 1919, except that a homestead interest in such property and the real estate of which she is seized jointly with her husband may be conveyed or mortgaged only by the joint deed of herself and husband (sec. 3164). When a married woman deeds or conveys real property acquired under some other than her present name, her conveyance of it must show both the former and present name (sec. 3165).

[The nature of the wife's ownership and the extent of her control over her real property depend on the date of its acquisition. If she acquired the property before February 13, 1919, when her rights of ownership and control were enlarged by statute, the husband has a freehold interest, as at common law, in any such land unless it is her separate property, that is, held to her sole and separate use.^{2 3} In order for such land to be classed as the wife's separate property, the deed conveying it to her must contain explicit words shutting out her husband from his marital rights in it.⁴

To convey land acquired by her prior to February 13, 1919, not her separate property, the statute provides: "A husband and wife may, by their joint deed, convey the real estate of the wife as she might do by her separate deed if unmarried" (sec. 2639). The joint deed is necessary to transfer a complete title because husband and wife are one person in the eyes of the law as to such property.⁵

If a wife acquired real property on or after February 13, 1919, whether or not the instrument conveying it to her specifically excludes the marital right of her husband, it appears to be regarded as her separate property, for she is empowered by statute (sec. 3164) to convey or mortgage, and to manage and control it alone, unless it is homestead property or is owned with the husband as a tenancy by entirety.]

Estate by the Entirety.

This form of ownership is created by a conveyance to husband and wife, and is a peculiar one. The parties take the property as one person, and have but one title, each owning the whole. When one party dies, the estate continues in the survivor. Neither acting alone can convey the property to bind the other. A conveyance to husband

and wife is expressly excepted from the operation of the statute (sec. 2632) abolishing joint tenancies.⁶

The husband has no interest in either the lands or the income from them, held by himself and wife jointly, which can be taken to satisfy his individual debts.⁷

Estates by entirety may exist in personal property growing out of real estate as well as in the land itself. The character of the interest held by a wife in an estate by entirety is separate, or quasi separate, property, and is free from the common-law marital rights of her husband.^{8 9 10}

Liability of a Wife's Separate Property for Her Husband's Debts.

"The rents, issues and products of the real estate of a married woman, and moneys and obligations arising from the sale of such real estate, and the interest of her husband in her right in real estate which belonged to her before marriage, or which she acquires by gift, grant, devise or inheritance during coverture, shall, during coverture, be exempt from attachment or levy of execution for the sole debts of her husband; but such annual products may be attached or levied upon for a debt or liability of her husband for the necessaries for the wife and family of such husband, and for debts for labor or materials furnished upon or for the cultivation or improvement of such real estate" (sec. 3168).

The real estate of a married woman may be charged with a mechanic's lien, when she assents to the contract (sec. 2761). [This section applies to land acquired by a married woman prior to February 13, 1919, not her separate property. It would seem that as to other real estate owned by a married woman the general law of liens applies. See Number 5 for wife's general liability.]

The earnings of a married woman are not subject to seizure for her husband's debts (sec. 1808. VI).

Real estate and tangible personal property, with the products from them, owned as an estate by entirety, are chargeable during the husband's lifetime for debts contracted by him after June 1, 1927, for the necessary upkeep of the property. The liability is as complete as if he owned the property in his name only (sec. 3167).

Rights of Wife Deserted, Abandoned, or Living Apart from Her Husband.

As to property in which a husband has his common-law marital rights, when owned by an adult wife who has been deserted, abandoned, or left without support, statutory provision has been made for the valid disposition of the wife's property rights through judicial proceeding. A similar provision as to real estate held in the wife's own right is available to a married woman who is of age, and is separated from her husband for any cause other than her adultery, if the separation has continued for more than 1 year (secs. 3171, 3172).

¹ *Walston v. Allen* (1909), 82 Vt. 549, 551; 74 Atl. 225.

² *City of Barre v. Town of Bethel* (1929), 102 Vt. 22, 27; 145 Atl. 410.

³ *Roberge v. Town of Troy* (1933), 105 Vt. 134, 142; 163 Atl. 770.

⁴ *Dietrich v. Hutchinson* (1901), 73 Vt. 134; 50 Atl. 810; 87 A. S. R. 698. (Hist.)

⁵ *Idem.*

⁶ *Corinth v. Emery* (1891), 63 Vt. 505; 22 Atl. 618; 25 A. S. R. 780.

⁷ *Idem.*

⁸ *Bank v. Jenkins* (1916), 91 Vt. 13, 20, 21; 99 Atl. 250.

⁹ *Corey v. McLean* (1926), 100 Vt. 90; 135 Atl. 10.

¹⁰ *George v. Dutton's Estate* (1920), 94 Vt. 76; 108 Atl. 515; 8 A. L. R. 1014.

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

The husband owns property acquired during the marriage by the joint efforts of himself and his wife, as a general rule, by operation of the common law. [See section 1263 as to adoption of common law.] This rule may be varied by voluntary action such as joint deeds or joint bank accounts.

The common-law rule has been applied, that personal property in the joint possession of parties who are husband and wife is presumed to be the property of the husband, until proved otherwise.¹

The statute giving a married woman the absolute right in her personal property and rights of action, and declaring such property free from liability for her husband's debts, expressly provides that "nothing herein contained shall authorize a claim by either husband or wife against the other for personal services" (sec. 3166).

The fact that a wife assisted her husband in his business and in caring for the money which was the product of their joint labor is held not to make any part of the money thus accumulated the property of the wife.²

¹ *State v. Kamuda* (1925), 98 Vt. 466, 473; 129 Atl. 306.

² *Monahan v. Monahan* (1904), 77 Vt. 133, 138; 59 Atl. 169; 70 L. R. A. 935.

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

"Every person within this State ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws" (Const., ch. 1, art. 4).

A married woman may sue and be sued as to all contracts which she is authorized by statute to make (sec. 3162). In general, all rights of action acquired by a woman, either before or after her marriage, are her sole and separate property (sec. 3166). See Number 9.

The court holds that these two statutes do not give a wife a right of action against her husband for his torts against her, on the ground that the legislature intended only parity between the spouses, and not to give to the wife a remedy which the husband did not possess against her either at common law or under the statute.

"* * * the purpose of the statute was not to abolish the legal identity of husband and wife, but to empower the wife, while that status exists, to sue and be sued in her own name like a *feme sole* in those instances where a right of action arose by reason of injuries to her committed by someone other than her husband."¹

The marriage of a woman during litigation to which she is a party does not abate the action, but the marriage may be suggested upon the record, and the case proceed as if she had remained unmarried (sec. 3174).

¹ *Comstock v. Comstock* (1934), 106 Vt. 50, 56; 169 Atl. 903.

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.

Neither spouse has a right of civil action against the other for a tort committed upon the one spouse by the other. See Number 11, reference to *Comstock* decision (106 Vt. 50).

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

Husband and wife are competent witnesses for or against each other in all causes, civil or criminal, except that neither may be allowed to testify against the other as to a statement, conversation, letter, or other communication made to the other or to another person. Neither spouse may testify in any case as to a matter which, in the opinion of the court, would lead to a violation of marital confidence. However, this statute does not prevent the parties to a divorce suit from testifying as to all matters in such proceeding (sec. 1738).

In actions against a bank by a husband to recover for moneys deposited by his wife in her name or as her money, the wife may be a witness as if she were an unmarried woman (sec. 8783).

Both husband and wife are competent to testify against each other in matters related to actions for desertion and nonsupport of family (sec. 3185).

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

A person of age and sound mind may devise, bequeath and dispose of his estate, real and personal, and of any right or interest which he has in any real or personal estate, by his last will and testament, and the word "person" shall include a married woman (sec. 2816).

See also Number 17.

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

The real and personal estate of a deceased person, not passing by will and not otherwise appropriated and distributed as directed by statute, descends, with reference to a surviving spouse, in the following manner:

ABSOLUTE INTERESTS

Share Under Inheritance Laws.

If no issue survive the decedent, the living spouse takes the entire estate when not in excess of \$4,000; or in an estate of greater value, such survivor is entitled to \$4,000 and one-half the remainder; or to the entire estate if the decedent left no kindred who, under the descent statutes, would be entitled to an inheritance in it. However, the surviving spouse is not entitled to this absolute share if he or she elects to take a third in value of the real estate of which the owner died seized in his or her own right, or accepts the provisions of the decedent's will (sec. 3042. II). See paragraphs following.

Share of Widow in Lieu of Dower.

If a widow chooses her statutory share instead of dower, she is entitled absolutely to one-third in value of all the real estate of which her husband died seized. If the husband is survived by only one heir who is the issue of the widow or the heir by adoption of both spouses, the widow is entitled absolutely to one-half in value of such real estate (sec. 3027).

This statute makes the homestead right additional to the widow's interest in lieu of dower. Moreover, such interest is not subject to payment of unsecured debts.¹

But the widow may be barred of her rights under section 3027 when:

(1) A jointure or some pecuniary provision was settled on her before marriage by her husband or some other person with or without her agreement or consent, or after her marriage with her consent, to be effective at the husband's death, and expressed to be in lieu or discharge of her one-third interest in the husband's real estate.

(2) The husband by will makes provision for her which, in the judgment of the probate court, was intended to be in lieu of such one-third interest.

(3) The husband dies leaving no children or their representatives and the widow is thereby entitled to the provisions made by statute in such cases [see section 3042. II] (sec. 3031).

Widow's Right of Election.

Within the time provided by statute, the widow may waive any of the foregoing provisions and take instead her share in lieu of dower in the husband's real estate, notifying the court in writing of her election.

If the widow was not the first wife of the decedent and he leaves no issue by her, and an agreement was entered into between them before or after their marriage regarding the widow's claim in lieu of the one-third interest, and if, in the opinion of the court, she has sufficient provision for her comfortable support during life, the court may deny to her such one-third part of the real estate, or any provision other than such as is provided by the agreement between the parties (sec. 3031).

Widow's Interest in Mortgaged Lands.

The widow is entitled to a third in value of the equity of redemption of lands mortgaged by her husband or which he held at the time of his decease under the mortgagor; and she may pay a third of the amount due on the mortgage and have a third in value of the land, as against the administrator, heirs, and creditors of her deceased husband (sec. 3028).

Widow's Right of Occupancy.

Until the third, or one-half, in value of the husband's real estate is set out to the widow, she may continue to occupy it, with the decedent's children and family, or may receive one-third of the rents, issues, or profits of such estate (secs. 3027, 3036). A widow who elects to waive her husband's will and take under the statute giving her one-third in value of the husband's realty, is entitled also to this provision.²

Share of Husband in Lieu of Curtesy.

If a widower chooses his statutory share instead of curtesy, he is entitled absolutely to one-third in value of all the real estate of which his wife died seized. If the wife is survived by only one heir who is the issue of the husband or the heir by adoption of both spouses, the husband is entitled absolutely to one-half in value of such real estate. The husband may be barred from such one-third, or one-half, interest, when he is entitled to and takes under the inheritance law [section 3042] or accepts a provision made for him in his wife's will (sec. 3040).

Husband's Right of Election.

If a married woman dies leaving a will, her husband may waive its provisions as a widow may waive the provisions of her husband's will. The provisions of this section do not apply to the estates of married women who died prior to November 8, 1910 (sec. 3041).

Also see allowance to a surviving spouse under Number 16.

¹ *Blanchard v. Blanchard's Estate* (1938), 109 Vt. 454, 461; 199 Atl. 233. (Hist.)

² *Idem.*

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

The probate court may make reasonable allowance for the expenses of maintenance of the widow and minor children, or either, constituting the family of a deceased person, out of his personal estate or the income of his real estate, during administration, as prescribed by statute (sec. 3021).

Allowance to a Surviving Spouse.

The surviving husband or widow receives from the decedent's personal estate, not disposed of by will, all the articles of wearing apparel and ornament, the decedent's wearing apparel, and such other part of the personal estate as the probate court assigns to the surviving husband or widow, according to his or her circumstances and the estate and degree of the deceased, which may not be less than a third, after payment of debts, funeral charges, and expenses of administration (sec. 3018).

The same allowance will be made:

(1) When the surviving husband or widow waives the provision made for him or her in the decedent's will (except that if the decedent dies without issue, the living spouse takes estate as if the decedent had made no will); or

(2) When the widow waives the jointure or pecuniary provision substituted for her statutory interest in lieu of dower; or

(3) When either spouse waives the provisions of the law in case the decedent died without issue. Such allowance is to be in lieu of his or her claim to the personal estate.

"* * * If the widow was not the first wife of the deceased, and he does not leave issue by her, and an agreement was entered into between them previous to their marriage, this provision shall be subject to the exception in relation to the allowance of such third interest to the widow in such cases" (sec. 3019).

The decedent's wearing apparel, if he leaves a widow, the articles of apparel and ornament of the widow, according to the estate and

degree of her husband, the apparel of the minor children, and such provisions and other articles as will necessarily be used in the maintenance of the family of the decedent, set apart under the direction of the probate court, are not to be considered as assets, nor be administered as such, nor included in the estate's inventory (sec. 2884).

See Number 15 as to widow's right of occupancy of the home; also Number 3 as to homestead exemption to surviving spouse.

Household Goods.

The surviving husband or widow of a deceased person residing with such person at the time of his or her death, may receive out of such person's estate all household goods, furnishings, furniture, and household outfit belonging in and to the decedent's immediate household when such deceased person dies intestate without issue, and the surviving spouse makes proper request for such assignment. This assignment, when made, is in addition to the distributive share of the estate to which a surviving spouse is entitled under other provisions of law (sec. 3020).

Summary Administration of Small Estates.

If the husband dies leaving a widow or minor children, or both, or if the wife dies leaving minor children and no surviving husband, and the estate does not exceed \$300 or is not sufficient to pay the debts and expenses of settlement and leave a balance of \$300, the probate court may, in its discretion, assign the estate to the value of \$300, or the whole of it if less than \$300, to the minor children, or the minor children under 7 years of age, or to the widow, or to the widow and minor children, for their use and benefit (sec. 3026).

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

The rights of a surviving spouse are paramount to all others, even to the power of the other to dispose of property by will. Until these rights are satisfied, no will can be effective.^{1 2} See Numbers 15 and 16 as to waiver of will and right of election.

A voluntary conveyance of land made by a husband during marriage to take effect at his death in order to defeat his widow's share in his real estate does not bar her right (sec. 3039).

See Number 9 as to wife's power of conveyance.

¹ *In re Peck's Estate* (1913), 87 Vt. 194, 212; 88 Atl. 568, 576.

² *In re O'Rourke's Estate* (1934), 106 Vt. 327, 331; 175 Atl. 24. (Hist.)

II.—MARRIAGE AND DIVORCE

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

A marriage license or certificate may not be issued when the expectant groom is under 16 or the bride expectant is under 14 years of age. If the male is under 21 or the female is under 18 years of age, parental consent in writing is required, and if the male is under 18 or the female is under 16 years of age, there is required, in addition, the certificate of a designated judge to the effect that the public good requires such license to be issued (secs. 21, 4131). See also Number 22, grounds for annulment.

19. Validity of Common-Law Marriage.

The doctrine of the common law in relation to marriage was never in force in this State. The subject of marriage is regulated by statute.¹

¹ *Morrill v. Palmer* (1895), 68 Vt. 1, 7; 33 Atl. 829; 33 L. R. A. 411. (Hist.)

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

Each party to an application for license to marry must file a licensed physician's certificate, showing that both applicants have been given the necessary examination for discovery of syphilis, including a standard serological test, within the 30 days immediately preceding the date of application for license. The certificate must show that in the opinion of the physician, the person named in the certificate either is not infected with syphilis, or if so infected, is not in a stage of the disease which is or may become communicable to the marital partner. The premarital test may be waived upon authority of the probate judge in specified cases (secs. 4121-4127).

"A person, having been told by a physician that he or she was infected with gonorrhoea or syphilis in a stage which is or may become communicable to a marital partner, or knowing that he or she is so infected, who marries, without assurance and certification from a legally qualified practitioner of medicine and surgery or osteopathy that he or she is free from such a disease, in a stage which is or may become communicable to the marital partner shall be imprisoned not less than 2 years or fined not less than \$500" or both (sec. 8502).

"A person who, while infected with gonorrhoea or syphilis, has sexual intercourse shall be imprisoned not less than 2 years or fined not less than \$500" (sec. 8503).

21. Interstate Cooperation in Marriage Law Enforcement.

A marriage is void for all purposes in the State of Vermont if contracted outside the State by any of its residents for the purpose of evading the Vermont marriage laws and with the intention of returning to Vermont for continued residence after marriage (sec. 3154).¹

A marriage is prohibited and void if contracted within the State of Vermont by a resident of another State, when the marriage is forbidden by the laws of such other State, and the party intends to return to that State to reside after marriage (sec. 3155).

¹ *Wheelock v. Wheelock* (1931), 103 Vt. 417; 154 Atl. 665.

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

Marriages prohibited because of forbidden degrees of relationship between the parties or because either has a former wife or husband living, if solemnized within the State, are void without any court action (secs. 3153, 3190). It should be noted that when a divorce has been granted, it is unlawful for the party complained of to marry any person other than the former spouse within 2 years of the date the divorce is granted, unless the former spouse has died within such time or permission of the court is obtained (sec. 3258).

If a marriage is supposed to be void or its validity is doubted for the causes mentioned above, either party may file a libel for annulment. Upon proper proof, the marriage will be declared void by a decree of nullity (sec. 3191).

The marriage may be annulled when, at the time of marriage, either party was under 16 years of age, or was an idiot or lunatic or physically incapable of entering into the married state or when the consent of either party was obtained by force or fraud (sec. 3192).

When the validity of a marriage is denied or doubted by either of the parties, the other party may begin a court action for affirming it, and, upon proper proof sustaining it, the marriage will be declared valid by court decree (sec. 3161).

23. Grounds for Divorce—Respective Availability to Spouses.

An absolute divorce may be granted: (1) For adultery in either party; (2) when either party is under sentence to imprisonment and hard labor for 3 years or more and is actually confined in prison at the time the divorce action is brought; (3) for intolerable severity in either party; (4) for willful desertion for 3 consecutive years, or when either party has been absent for 7 years and not heard of during that time; (5) for the incurable insanity of either party when established as required by statute. A wife may be granted such divorce when her husband has sufficient pecuniary or physical ability to provide suitable maintenance for her, and, without cause, persistently refuses or neglects so to do; (6) a divorce may be granted if husband and wife have lived apart for 3 years without fault of the petitioner, and resumption of marital relations is not reasonably probable (sec. 3205).

A partial divorce, that is, "a divorce from bed and board," forever or for a limited time, may upon petition be decreed for any of the causes for which an absolute divorce may be granted (sec. 3218).

See Number 22.

III.—PARENTS AND CHILDREN

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

A married woman whose husband deserts her or from intemperance or other cause becomes incapacitated or neglects to provide for his family, may make contracts for the labor of her minor children; she is entitled to their wages and may sue for and recover such wages in her own name (sec. 3170).

But if the parents are living together, the father is entitled to the child's services and earnings, by rule of the common law. See section 1263, as to general authority of the common law in this jurisdiction.

See also Numbers 25 and 26.

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

The father and mother of a legitimate minor child, if competent, are the joint guardians of such child. The surviving parent, if competent, becomes the sole guardian (sec. 3292). The mother of an

illegitimate minor child is guardian of such child until another is appointed (sec. 3293).

When a minor is entitled to any estate a guardian must be appointed to receive it, even though the minor has a parent living who is authorized to act as guardian (sec. 3297); but in such case the parent so authorized may be appointed as guardian if approved by the court (sec. 3298). A guardian of a minor appointed by the probate court has the care and management of the child's estate and, except as otherwise provided, the custody and tuition of the minor. The guardian is required to furnish him suitable employment, provide for his education and instruction in science or some trade or profession, according to his circumstances, and may bind him out to service as provided by law (sec. 3303).

The father of a minor or, if he is dead, the mother, may have the custody of the person and care of the education of the minor if the court, at the time of appointing a guardian of the minor, deems the parent to be competent and suitable for that purpose (sec. 3305).

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

A father may, by his last will, appoint guardians for his minor children, whether living at the time of making the will or born afterward, and such guardians are to be governed by the laws applicable to guardians appointed by the probate court (sec. 3306). But see Number 25 as to provision for custody and education when the mother is living.

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

The real and personal estate of a deceased person, not disposed of by will nor otherwise appropriated and distributed under the statute, may be inherited by his or her parents as follows:

When the decedent is a married person and leaves no issue, the remaining portion of the estate, after the share of the surviving husband or widow has been set apart [see Number 15], descends to the father and mother of the decedent in equal shares if both are living, or to the survivor of them if one is dead.

When the decedent leaves neither spouse nor issue, the father and mother take the estate in equal shares, or, if one is dead, the survivor takes the entire estate (sec. 3042).

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

When the paternity of a child born, or to be born, out of wedlock has been established under the judicial proceeding provided by statute, the adjudged father is ordered by the court to support the child, with the assistance of the mother, in such manner and proportion as the court judges proper, and for such time as the child is likely to be unable to support itself, and no longer, and he must pay to the mother that proportion of expenses already incurred which the court deems just, also costs of the proceeding, at such time as the court directs (sec. 3273). Bond is required of the father for performance of the court's orders (sec. 3274). Failure to supply bond and make required

payments subjects the adjudged father to jail commitment (sec. 3275) and his refusal to make required payments will cause judgment to be entered and execution issued to enforce payment (sec. 3276).

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

The estate of a person born out of wedlock who dies intestate and without issue or spouse surviving, descends to the decedent's mother, and if the mother is dead, through the mother's line as if the decedent had been born in wedlock (sec. 3044).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Since in the absence of an express statute the common law governs, the wife's domicile is determined by that of her husband, as a general rule.

For the purpose of voting at a general election, a person's residence is determined by the residence of his family if within the State and supported by him. If he has no such family, his residence is in the town where he has actually spent his time during the 3 months preceding the election (sec. 103).

31. Public Office—Eligibility of Women.

A person may not be debarred on account of sex from holding any office or position of trust or responsibility under the State, including United States senator and representative to Congress, or any county, town, city, village, town school district, or incorporated fire, lighting, or school district office (sec. 108).

32. Jury Service—Eligibility of Women.

Women are eligible for jury duty equally with men (secs. 1459, 1462, 1584, 1586, 1594, 1597).

