

The Legal Status of Women in the United States of America

REPORT FOR

WEST VIRGINIA

as of January 1, 1956



WOMEN'S BUREAU BULLETIN 157-47 (Revised)

UNITED STATES DEPARTMENT OF LABOR

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WOMEN'S BUREAU

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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, and "natural male dominance." Economic and social advances in the position of women in the United States have brought about marked changes in the laws governing property and family rights and political status.

In general, it has been the rule that where specific statutes abrogating common-law principles have not been enacted, the common law applies. In the century just past, many of the old common-law injustices to women have been removed by statute.

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man.

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

SOURCES

Constitution of West Virginia.

1955 Code Annotated.

West Virginia Reports.

Southeastern Reporter.

EXPLANATORY NOTE

This pamphlet, Bulletin 157-47, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of West Virginia. It includes pertinent statutory changes enacted in that State up to January 1, 1956, and supersedes the previous report and addendum for West Virginia.

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 6, sec. 48)," placed after the related subject matter.

References to the code sections are likewise in parentheses, as "(sec. 4731)."

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

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

WEST VIRGINIA

CIVIL RIGHTS

Contracts and Property

1. Age of majority

The age of majority is 21 years for both men and women, by rule of common law, which governs in the absence of an express statute on the subject. (See Constitution, art. 8, sec. 21, and 1955 Code, sec. 22; also sec. 33 (m), which provides that the statutory phrase "under disability" includes persons under 21 years of age.)

2. Contractual powers of a minor

In general, the contracts of a minor are not void, but voidable, and may be ratified or disaffirmed by him after attaining full age.¹ But his contracts for necessities which are essential to life and comfort, and suitable to his station in society, may not be disaffirmed by him.²

A person who conveys real estate during his minority may disaffirm his deed, but he must do so within a reasonable time after becoming of age.³

A minor may not serve as an executor (sec. 4124).

Certain contracts permitted by statute

A minor over 14 years of age may become a shareholder in building and loan associations, and is subject to the same duties and liabilities in regard to his stock as if adult. A minor under 14 years may hold shares through a guardian or trustee (sec. 3164, subsec. 1).

A deposit to the account of a minor in any banking institution is subject to his withdrawal as if he were adult unless the minor's parent or guardian has specifically directed the bank in writing to refuse such withdrawal (sec. 3206).

To charge any person upon a promise made after he or she attained majority, to pay a debt contracted in infancy (minority), it is necessary that the promise be made in writing (sec. 5392).

(As to capacity to make a will, see number 14.)

¹ *Hobbs v. Hinton Foundry Co.* (1914), 74 W. Va. 443, 446; 82 S. E. 267; Ann. Cas. 1917D, 410.

² *Wallace v. Leroy* (1905), 57 W. Va. 263, 267; 50 S. E. 243.

³ *Muncey v. Railway Co.* (1928), 106 W. Va. 348; 145 S. E. 581.

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

Personal property

Any husband or parent residing in this State, or widow, or infant children of deceased parents, who claim exemption of personal property, may set apart and hold such property up to \$200 in value, except as otherwise provided. A mechanic, artisan, or laborer residing in the State, whether a husband or parent or not, may exempt the working tools of his trade or occupation to the value of \$50, but the total exemption may not exceed \$200 in any case (Const., art. 6, sec. 48; sec. 3897). Otherwise, a single person may not claim exemption, all of his property being subject to an execution lien.⁴ (See also "Wages" below.)

When personal property has been set apart as exempt, in the manner provided by statute, the owner cannot give a valid lien on such property within 1 year after exemption has been declared (sec. 3898). If the husband or wife who is entitled to claim the personal exemption is absent, incapable of acting, or neglects or declines to act when execution or other process is pending, the other spouse may make the claim of exemption with the same effect as the owner might have done (sec. 3899). The statute does not allow both husband and wife to claim exemption, but permits one or the other to make the claim.⁵ None of the personal exemptions can be claimed against a debt for purchase-money of such property, or for taxes, or county, district, or municipal levies (sec. 3907).

A person entitled to claim exemption of personal property is required to list "all personal property and estate owned or claimed by him, including money, bonds, bills, notes, claims and demands," and may select from all such property that part which he desires to exempt within the limit of \$200 in value (sec. 3899).

Wages

Eighty percent of salary or wages due private or public employees, or in any event no less than \$10 per week, is exempt from execution in garnishment proceedings (sec. 3834, subsecs. (3) and (15)).

Insurance

Benefits from fraternal beneficiary societies may not be seized to pay any debt or liability of a member or beneficiary, or of any person having a right through either of them, before or after payment of such benefit (sec. 3431). (See also number 5.)

Damages for wrongful death

The amount of damages recovered in an action for the wrongful death of any person is not subject to his or her debts or liabilities, but

⁴ *Stevens v. Carey* (1932), 112 W. Va. 1; 163 S. E. 772.

⁵ *McGrew v. Stewart* (1932), 113 W. Va. 45; 166 S. E. 847.

is to be distributed to the persons and in the proportions provided by the statute of distribution (sec. 5475). (See number 15.)

B. HOMESTEADS

Any husband or parent residing in the State, or the infant children of deceased or insane parents, may hold exempt a homestead of \$1,000 value (Const., art. 6, sec. 48; sec. 3911). But to effect such exemption, the person entitled to it must set apart the property by a writing, executed and acknowledged as required for a deed and containing a clear description of the land. This declaration of exemption must be recorded by the clerk of the county court (sec. 3912). Such property is exempt from the time the declaration is filed for record, as against all debts and liabilities contracted and incurred afterward. It is not exempt from liens or other debts and liabilities arising before the declaration is filed, nor from liens for purchase-money, permanent improvements of the property, taxes, or county district or municipal levies (sec. 3913).

The owner of a homestead is free to sell or encumber it.⁶ Apparently, the sole deed of such owner conveys a valid title, so far as the exemption is concerned, since no constitutional or statutory provision requires both spouses to join in the conveyance. (But as to statutory dower rights, see number 15.)

On the death of the owner of a declared homestead the benefit of the exemption descends to his or her minor children, to be held and enjoyed by them until all such children attain the age of 21 years (sec. 3915).

4. Ownership and control of property owned at marriage

All property owned by a woman at the time of her marriage, with the rents, issues, proceeds, and profits from such property, remains her separate estate as if she were a single woman, and is in no way subject to the control or disposal of her husband, nor liable for his debts (sec. 4731).

5. Contractual powers of a married woman

A married person may make contracts with any person, including his or her spouse, and is liable on such contracts, and for his or her debts contracted during marriage, as if unmarried (sec. 4738). But a husband and wife may not contract to alter or dissolve the marriage (sec. 4754). A contract between husband and wife cannot be enforced by legal action unless such contract, or some memorandum or note of it, is in writing and signed by the person to be charged by it (sec. 4739).

⁶ *Moran v. Clark* (1887), 30 W. Va. 358, 378; 4 S. E. 303; 8 A. S. R. 66.

A married woman's sole deed or conveyance transfers absolutely her rights and the rights of her representatives in her real estate, but has no effect on the husband's dower, unless he joins in the deed or conveyance. Her contract or agreement to convey her real estate is enforceable against her; and she is liable on any covenant in her deed, writing, or contract as if she were a single woman (sec. 4733).

A married woman may make a valid appointment in her own name of an attorney in fact to execute any deed or other writing which she might execute in person, and with the same effect (sec. 4736).

In general, any written conveyance or transfer between husband and wife of property, or property rights, is valid, but in a direct attack on the validity of the transaction, the spouse in whose favor it was made must prove that the conveyance of transfer is lawful and valid in all respects (sec. 4737).

A married woman's property, whether held by legal or by equitable title, may not be subjected to any restraints upon her alienation of it or to any other restrictions not lawfully placed upon the property of unmarried persons (sec. 4743).

A wife, and not her husband, is liable for her contracts or debts made or incurred before marriage. Such obligations are enforceable against her and her property as if she were single (sec. 4744). She alone is liable for her wrongful or tortious acts, whether committed before or after marriage, and whether under the coercion or instigation of her husband or not. Her husband is not liable for such acts unless they were committed by the wife as his agent, or by his actual coercion or instigation conclusively shown (sec. 4750).

Obligations between husband and wife arising from contract or tort relative to any property conveyed or transferred by either spouse to the other are enforceable to the extent of the value of such property (sec. 4745).

Any judgment recovered against a married woman is a lien upon her real estate, and is enforceable against her and her property, real and personal, as if she were unmarried (sec. 4751).

A married woman may enter into partnership with her husband, or any other person or persons, and as such partner she and her property become liable for the partnership debts and obligations as if she were a single woman (sec. 4748).

A married woman who has property held in trust for her is entitled to have the trust terminated by the same means and to the same extent as if she were unmarried; and she may require the trustee to convey to her all or any portion of such property, or its accumulations, for her own use and benefit (sec. 4741). With respect to any real or personal

property held in trust for her, she is entitled to the legal rights available to any other person for whom property is held in trust (sec. 4742).

Any married woman may, in her own name or in the name of a third person willing to act as her trustee, contract for insurance on her husband's life, and may become the beneficiary of life insurance as provided by statute. Every such policy, issued expressly for the benefit of any married woman, or assigned or made payable to her or her trustee, becomes her property and is to be held for her use and benefit. If she survives the period or term of such policy, the proceeds belong to her, free from the control, disposition, or claims of her husband, or of the person effecting or assigning such insurance, and from the claims of their respective representatives and creditors. However, any portion of the annual premium in excess of \$300 paid by any person with intent to defraud his creditors may be held for the benefit of such creditors, upon proper notice by them. The wife may assign her interest in such a policy, as provided by statute (sec. 4753).

Any assignment of wages, or any lien on household furniture in the possession and use of the borrower given as security under the Small Loans Act by a married person living with husband or wife must be signed in person by both spouses (sec. 4653, subsec. 17).

Fiduciary positions

Administration of a decedent's estate will be granted to the distributees who apply for appointment, preferring first decedent's husband or wife, and then such of the others entitled to distribution as the court or clerk deems fit (sec. 4123).

The marriage of a woman after her appointment as a personal representative does not authorize her husband to act as such representative in her right, nor does it operate to extinguish her authority (sec. 4129).

6. Earnings of a married woman

The earnings of a married woman, and any and all property, real and personal, purchased by her with the proceeds of such earnings, are her own property and are not subject to her husband's control or disposal nor liable for his debts (sec. 4746). She may sue in her own right to recover such property (sec. 4749). (See number 11.)

7. Liability for family support

All purchases made, or services contracted for, by either husband or wife in his or her own name, are presumed, in the absence of notice to the contrary, to be on his or her private account and liability. But both husband and wife are liable for: (1) The reasonable and necessary services of a physician rendered to them or their minor children; (2) family house rent; (3) goods purchased for family support or the

joint benefit of both spouses; (4) reasonable wearing apparel of the wife and their minor child, and reasonable support of such wife and child while abandoned by the husband; and (5) reasonable services of any domestic, laborer, or other person from which the family or both husband and wife benefit. It is the duty of the husband to support his family, and his property must be the first applied to satisfy any such joint liability. The wife's liability is secondary, and when she has paid any such debts with her money or property, she has the same right of recovery against her husband that the creditor had whose claim was settled by her (sec. 4752). But the husband is not relieved of his liability to support his wife and family because of this statute (sec. 4754). (See also number 28.)

Any husband who without just cause deserts or willfully neglects or refuses to provide for the support and maintenance of his wife, in destitute and necessitous circumstances, is guilty of a misdemeanor (sec. 4777).

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

A married woman, separately or with any other person or persons, may carry on any profession, trade, occupation, or business; and the equipment, stock, property, tools, and appliances used in such profession, trade, occupation, or business, and the issues and profits, together with her earnings therefrom, are her own property, and are not subject to the control or disposal of her husband, nor liable for his debts (sec. 4747). (See also number 5.)

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

All real and personal property owned by a woman at the time of her marriage, or acquired by her afterward through inheritance, gift, grant, or will, with the rents, issues, proceeds, and profits from such property, is hers in all respects as if she were a single woman. It is not subject to the control or disposal of her husband nor liable for his debts. A married woman may hold, lease, sell, dispose of, convey, agree to sell or convey, devise and bequeath any such property or interest in it, as if she were a single woman; but the disposition of her real estate by her alone does not affect her husband's right of dower in it (sec. 4731, 4732). (See Const., art. 6, sec. 49.)

Estates by entirety have been abolished in this State.⁷

(See also numbers 5, 6, and 8.)

Where one spouse buys real or personal property and pays for it, but takes title in the name of the other spouse, the transaction will be presumed to effect a gift to the spouse in whose name title is taken, in the absence of evidence of a contrary intention (sec. 4740).

⁷ *McNeeley v. Oil Co.* (1903), 52 W. Va. 616, 629; 44 S. E. 508; 62 L. R. A. 562.

10. Property acquired by joint efforts of husband and wife

By common-law rule, in the absence of statute, property acquired during marriage by the joint industry and efforts of husband and wife belongs to the husband, unless joint ownership is created by private arrangement, such as joint deeds or joint bank accounts. (See numbers 6, 8, 9, and 11 for sources from which a married woman's separate property is derived.)

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

A married woman may sue or be sued alone in the courts of the State in all cases as if she were a single woman (sec. 4749). Under this statute she sues in her own name to recover damages for personal injuries to herself, where the ground of the action is her injury and suffering; and the same rule applies in actions concerning her separate property.⁸ Also, for a personal injury to herself she is entitled to recover for loss of her time and the money expended from her separate estate in effecting a cure, if she shows that a material portion of her time had been spent earning money for herself;⁹ but until she chooses to employ her time in her separate business, her husband is entitled to it, and she cannot recover for its loss. Neither can she recover for money expended in effecting a cure unless she has made payment from her separate estate or has personally assumed the liability.¹⁰

A married woman is empowered by statute to maintain in her own name all suits and proceedings necessary for the protection and vindication of her property rights.¹¹

A wife has the right of action in her name alone for wrongful alienation of her husband's affection causing his separation from her. It is undoubted that a husband may sue for the seduction of his wife, and there is no reason why the wife should not have equal right to sue for seduction of her husband.¹²

The marriage of a female litigant does not affect her rights under the suit or action, but upon proof of the marriage the proceeding continues in her new name (sec. 5688).

12. Damages for injury by spouse to person or property

The common law is the basis of the jurisprudence of West Virginia. Its principles are controlling, save as changed by statute. Under the common law, one spouse cannot maintain against the other an action for damages for personal injuries arising within the period of the

⁸ *Normile v. Wheeling Traction Co.* (1905), 57 W. Va. 132, 135; 49 S. E. 1030; 68 L. R. A. 901.

⁹ *Hains v. Parkersburg Ry. Co.* (1915), 75 W. Va. 613, 619; 84 S. E. 923; 66 A. L. R. 1195n.

¹⁰ *Warth v. County Court* (1912), 71 W. Va. 184, 189; 76 S. E. 420; 66 A. L. R. 1191n.

¹¹ *Morris v. Westerman* (1917), 79 W. Va. 502, 507; 92 S. E. 567.

¹² *Gross v. Gross* (1912), 70 W. Va. 317, 321; 73 S. E. 961; 39 L. R. A. (N. S.) 261.

marriage. The common-law rule precluding personal tort actions between husband and wife has not been abrogated in this State.¹⁸

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

In general, husband and wife are competent witnesses to testify for or against each other in either civil or criminal cases (sec. 5727); but there are important exceptions to this rule. For example: In criminal cases neither spouse may be compelled, nor, without the consent of the other, allowed to be called as a witness against the other except in a prosecution for an offense committed by one against the other, or against the child, father, mother, sister, or brother of either of them (sec. 5728). Also, neither husband nor wife may be examined, without the consent of the other, in any case as to any confidential communication made by one to the other during marriage (sec. 5729).

In prosecutions for desertion or support of a wife and minor children both husband and wife are competent witnesses to testify against each other in regard to any and all relevant matters, including the fact of marriage and the parentage of the child or children (sec. 4781).

14. Right to dispose of separate property by will

Every person of sound mind who is 21 years of age or over may by will dispose of any estate to which he may be entitled at his death (secs. 4039, 4040). (See also number 9.)

Every will made by a man or woman is revoked by his or her marriage, except a will that makes provision for such a contingency, or one made in the exercise of a power of appointment over an estate not inheritable by the testator's heirs, personal representative, or next of kin (sec. 4044).

15. Inheritance rights in deceased spouse's estate

The estate of an intestate decedent is shared in by a surviving widow or husband as follows:

Real property

Absolute interest

When the decedent leaves no child, nor descendant of any child, but one parent survives, one-half of the estate goes to the surviving wife or husband and to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.

When decedent leaves no child, nor descendant of any child, nor parent, the whole of the estate goes to the surviving wife or husband and to the decedent's brothers and sisters and the descendants of deceased brothers and sisters (sec. 4080). In any such partition, the share of decedent's wife or husband is determined by the number of

¹⁸ *Poling v. Poling* (1935), 116 W. Va. 187, 189, 191; 179 S. E. 604. (Hist.)

brothers and sisters, and not by the number of such descendants (sec. 4082).

Life interest

Tenancy by the curtesy has been abolished (sec. 4113).

In general, the surviving spouse is endowed of one-third of all the real estate or any legal or equitable interest in such property in which a deceased husband or wife at any time during the marriage held, or was entitled to hold, an estate that could be inherited by his or her heirs. But this right of dower may be barred or relinquished as provided by law (sec. 4096).

"In any suit or proceeding for partition, or for the purpose of subjecting lands to the payment of debts or liens subordinate to dower, or for any other purpose, the real estate involved may, by order of the court, be sold free and clear of all inchoate dower rights therein, if the person or persons entitled to such rights be made a party or parties to the suit or proceeding, and in such case, such rights in dower shall be forever barred; and the court by which such sale shall be confirmed shall direct the payment, out of the net proceeds of sale and applicable to the share or shares in such lands as are subject to such inchoate dower rights, to such person or persons of such gross sum, computed according to the method provided [by statute] * * *, as shall represent the present value of such inchoate dower rights" (sec. 4100).

Also, if the owner of real estate contracts to sell it, and his or her spouse refuses to release his or her dower interest, the owner, or the person contracting to purchase the property, may bring court action to have the dower interest released and the contract consummated. If the court is satisfied that the contract was made in good faith and without design to force the other spouse to part with his or her dower interest, it will approve the sale and price, order payment to such spouse of the present value of the dower, and, upon such payment, order release of the dower interest by such spouse or, if he or she refuses to execute the release, then by a special commission appointed by the court for the purpose (sec. 4101).

Personal property

After payment of funeral expenses, charges of administration, and debts, the surplus personal estate is distributed to and among the same persons, and in the same proportions, that real estate is directed to descend, except as follows:

(a) If the decedent was a married woman and left issue surviving, her husband is entitled to one-third of such surplus, but if she left no issue he is entitled to the whole of it.

(b) If the decedent left a widow and issue by the same or a former marriage, the widow is entitled to one-third of such surplus, but if he left no such issue she is entitled to the whole of the surplus (sec. 4089).

16. Provision for survivors during administration of estate

The surviving spouse is entitled to occupy "the mansion house and curtilage" without charge until dower is assigned (sec. 4105).

It is provided further that the surviving spouse or minor children of a decedent and such surviving spouse are permitted to occupy "the mansion house and curtilage" until the youngest surviving child reaches the age of 21 years, and assignment of dower is not to be made until such time except with the consent of the surviving spouse unless such mansion house and curtilage are assigned to him or her as dower or part of dower, or unless he or she elects to take dower out of other real estate. However, this right of occupancy is subject to the rights of the decedent's creditors, when personal property and all the other real estate have been exhausted in payment of debts. During such occupancy the surviving spouse is liable for repairs, taxes, and insurance on the property; and the right of occupancy ceases when the property is no longer used as a home by the surviving spouse or the minor children of the decedent and such surviving spouse (sec. 4106). (See also number 3, B. Homesteads.)

Provisions and fuel, or so much of them as may be necessary, on hand for family use at the death of any person, are to remain for the use of the family, if desired by any member of it, without account being made. Any livestock necessary for the food of the family may be killed for that use before the sale or distribution of the estate (sec. 4136).

Rights of exemption

The surviving spouse or minor children of a deceased person may hold exempt personal property of the estate to the value of \$200, against debts or liabilities of the decedent (sec. 3906), except as to purchase-money, taxes, or county, district, or municipal levies (sec. 3907).

Rights in certain small estates

Sums not exceeding \$300 due from an employer to a deceased employee may be paid the surviving spouse, as prescribed by law, when no administration of the decedent's estate is sought (sec. 4146).

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

When any provision is made in a will for the surviving husband or wife of the testator, the living spouse may renounce the provision

in the manner and within the time prescribed by statute. When the renunciation is filed, or if no provision is made in the will for the surviving spouse, such survivor is entitled to that share in the decedent's real and personal estate which he or she would have taken if the decedent had died intestate leaving children. (See number 15, Life interest.) Otherwise, the living spouse receives only that portion of the estate given him or her by the decedent's will (sec. 4091), unless it clearly appears from a construction of the will and attendant facts that the testator intended the surviving husband or wife to take the provision under the will in addition to his or her dower and distributive share of the personalty (sec. 4092).

Marriage and Divorce

18. Age of consent to marriage

For marriage the age of consent for the male is 18 years, and the female 16 years (sec. 4679). Marriage contracts made under the ages of consent are void only from the time they are so declared by decree of divorce or nullity, and as provided by statute, according to the rights of the case.¹⁴

Parental consent, or consent of guardian, in the form prescribed by statute, must be given when any person intending to marry is under 21 years of age and not previously married (sec. 4686).

(See also numbers 21 and 22.)

19. Common-law marriage

Every marriage in the State must be under a license and solemnized according to statute (sec. 4683). A common-law marriage contracted in the State is not a valid marriage, and is deemed null in law so far as husband and wife are concerned.^{15 16}

20. Premarital requirements

Each applicant for a marriage license must file a physician's certificate in evidence of a standard test and examination for syphilis, made within 30 days of the date of the application, and stating that in the physician's opinion the applicant is not infected with that disease in a communicable stage.

The license may not be issued until 3 days after application for it has been filed with the clerk of the county court, except in extraordinary cases, when a judge of the circuit court may authorize the clerk to issue the license earlier and to waive the requirement of physician's certificate (sec. 4684).

¹⁴ *Perkey v. Perkey* (1921), 87 W. Va. 656, 659; 106 S. E. 40.

¹⁵ *Beverlin v. Beverlin* (1887), 29 W. Va. 732, 739; 3 S. E. 36. (Hist.)

¹⁶ *Kester v. Kester* (1929), 106 W. Va. 615, 618; 146 S. E. 625.

21. Interstate cooperation in marriage-law enforcement

In general, the rule is recognized under which "a marriage valid or void by the law of the place where it is celebrated, is valid or void everywhere." (2 Kent's Commentaries, 92.)¹⁷

If any person resident in this State shall, in order to evade the law, and with an intention of returning to reside in this State, go into another State or country, and there intermarry in violation of the provisions of section one, article two, of this chapter (section 4701), and shall afterwards return and reside here, cohabiting as man and wife, such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this State (sec. 4695). (See number 23.)

22. Annulment

All marriages between a white person and a Negro; all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living; all marriages which are prohibited by law on account of consanguinity or affinity between the parties; all marriages solemnized when either of the parties was an insane person, feeble-minded person, idiot, imbecile, or an epileptic, or was afflicted with a venereal disease, or was incapable, because of natural or incurable impotency of body, of entering into the marriage state, or was under the age of consent; all marriages solemnized when either of the parties, prior to the marriage, without the knowledge of the other, had been convicted of an infamous offense, or when, at the time of marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or prior to such marriage had been, without the knowledge of the husband, notoriously a prostitute, or when, prior to such marriage the husband, without the knowledge of the wife, had been notoriously a licentious person, shall be void from the time they are so declared by a decree of nullity (sec. 4701). (See number 23 as to limitation on remarriage after decree of divorce.)

Annulment suits may not be instituted where cause is: (1) impotency of either party, by party who had knowledge of incapacity at time of marriage; (2) fraud, force, or coercion by guilty party, or by injured party if after knowledge of facts he or she confirmed marriage; (3) venereal disease existing at marriage if subsequent to marriage affected party is cured, or if after afflicted party is cured other party confirmed marriage; (4) nonage, by party capable of consenting to marriage, nor by incapable party, if he or she confirmed marriage after arriving at age of consent; (5) lack of consent, by party consent-

¹⁷ *Miller v. Miller* (1915), 76 W. Va. 352, 355; 85 S. E. 542.

ing or bringing about the marriage; (6) conviction of infamous crime prior to marriage if after knowledge of fact other party has cohabited with convicted party; (7) wife with child by other person at time of marriage, or if wife notorious prostitute, if husband after knowledge of fact has cohabited with wife; (8) husband prior to marriage notoriously licentious person, by wife if after knowledge of fact, she has cohabited with husband (sec. 4703).

23. Divorce

An absolute divorce may be decreed to the injured spouse for: Adultery; imprisonment as defined by statute; willful abandonment or desertion for 2 years; cruel or inhuman treatment, or reasonable apprehension of bodily hurt, and a charge of prostitution made by the husband against the wife falsely will be deemed cruel treatment under this statute; habitual drunkenness subsequent to the marriage; or addiction to habitual use of narcotic drugs subsequent to the marriage (sec. 4704).

When a divorce is decreed neither party may marry within 60 days from the date of the decree or pending an appeal of the case in the supreme court. In the discretion of the trial court, the guilty party may be prohibited from remarriage during a further period not to exceed 1 year from date of the divorce. Any marriage contracted by a divorced party within the prohibited period, except a remarriage to the person from whom divorced, is void, and the violator is criminally liable (sec. 4722). The word "void" as here used is to be given its literal meaning, and marriages contracted within the prohibited time are mere nullities.¹⁸

The court upon granting a divorce to a woman may, if there are no children of the marriage, allow her to resume her maiden name or the name of a former deceased husband (sec. 4721).

Annulment of marriage or divorce bars all rights of either husband or wife to dower; but in granting a divorce the court may compel the guilty party to compensate the innocent party for the inchoate right of dower in existing property (secs. 4717, 4718).

Dower is barred if one spouse voluntarily leaves the other and lives in adultery and there is no reconciliation; or if one spouse abandons the other without cause and lives separate and apart at the time of the other's death (sec. 4114).

Alimony and maintenance

The court may at any time after commencement of divorce suit and reasonable notice to the man, make any order proper to compel him to pay any sum necessary for maintenance of the woman, and custody

¹⁸ *Cole v. State Compensation Com'r.* (1939), 121 W. Va. 111; 1 S. E. (2d) 877.

and maintenance of minor children of the parties, or to compel the man to deliver to the woman any of her separate estate which may be in his possession or control, or to prevent him from interfering with her separate estate (sec. 4713). Upon decreeing a divorce the court may make any further decrees it may deem expedient concerning the maintenance of the parties, the care, custody, maintenance, and education of the minor children, and may determine with which of the parents the children may remain (sec. 4715).

Upon decreeing annulment or divorce, the court may award to either of the parties whatever property, real or personal, may be in the possession or under the control, or in the name of, the other, and to compel a transfer or conveyance thereof (sec. 4719).

Where husband without good and sufficient cause fails to provide suitable support for wife, or has abandoned or deserted her, or if wife, for such cause as would entitle her to a divorce is actually living apart from her husband and he has sufficient ability to support her, court may at suit of wife, whether or not divorce is requested, decree as to alimony and separate maintenance, and may free her real and personal property from possession, control, or any interest of husband (sec. 4729).

Parents and Children

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

If living together, the father and mother are joint guardians of the person of their minor child or children, with equal powers, rights, and duties in respect to the custody, control, services, earnings, and care of the education of such minor child or children; and neither parent has any superior right to that of the other in these matters. If the parents are living apart at the time application is made for appointment of a guardian, the court will appoint that parent who is, in the court's opinion, best suited for the trust, considering the welfare and best interests of the minor child or children (sec. 4255).

25. Guardianship of a minor child

When necessary for the county court to make appointment of a guardian for any minor within its jurisdiction, the father or mother will be preferred for such appointment; but in every case the competency and fitness of the person, and the welfare and best interests of the minor, will govern the court's selection (sec. 4251). (See also number 24.)

26. Appointment of testamentary guardian for a minor child

Every father or mother may by last will and testament appoint a guardian for his or her child, born or to be born, and for such time

during its infancy as he or she may direct. Where both father and mother have so appointed guardians, only that guardian who is the appointee of the parent last living is entitled to the custody of the person of such child (sec. 4249).

27. Inheritance—child

When a person having title to real estate subject to inheritance dies intestate as to such property, it descends in the following manner with regard to the decedent's parents:

1. If the decedent left no child nor descendant of a child, then one-half each to his father and mother.
2. If there be no child, nor descendant of any child, and only one parent, such parent takes one-half the estate, the other half going to decedent's widow or husband and brothers, sisters, and descendants of deceased brothers and sisters.
3. If there be no child nor descendant of any child, no widow or husband, brother, sister, or descendants of any brother or sister, and only one parent of the decedent, such parent takes the entire real estate (sec. 4080).

The personal estate subject to distribution passes to the same persons and in like proportions as provided for real estate, when the decedent leaves no spouse nor issue (sec. 4089). (See number 15.)

28. Child born out of wedlock

When the paternity of an illegitimate child has been determined as provided by statute, the adjudged father will be ordered to pay for the maintenance, education, and support of the child such sums as the court may deem proper for each year, and at designated times, during an appointed period. Bond will be required for performance of the decree (sec. 4773). The court has jurisdiction in such cases until the child is 21 years of age, to make any necessary further orders increasing or decreasing the amount of money to be paid, or requiring a new or additional bond (sec. 4774), and is empowered to render judgment on the bond against the father and his sureties, and his and their personal representatives, for amounts past due and unpaid under the decree (sec. 4775).

Any parent who, without lawful excuse, deserts, willfully neglects, or refuses to provide for the support and maintenance of his or her legitimate or illegitimate child or children, under the age of 16 years, in destitute and necessitous circumstances, is guilty of a misdemeanor, and, upon conviction, will be subject to fine, or imprisonment with hard labor, or both (sec. 4777).

The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate (sec. 4086). If a man, having had a

child or children by a woman, shall afterward intermarry with her, such child or children, or their descendants, shall be deemed legitimate (sec. 4085).

29. Inheritance—child born out of wedlock

The mother of a child born out of wedlock inherits from his estate as if he were legitimately born (sec. 4084).

POLITICAL RIGHTS

30. Domicile of a married woman

By operation of the common law, in the absence of a statute to the contrary, the general rule is that the wife's domicile follows that of her husband. But the conceded right of the husband to determine the matrimonial domicile must be exercised reasonably; otherwise the wife is justified in leaving the husband and may charge him with desertion.¹⁹

A wife may have a domicile in this State separate from that of her husband for the purpose of jurisdiction in obtaining a divorce.²⁰

31. Public office—eligibility of women

No provision appears in the Constitution or statutes which precludes women who are qualified electors from election or appointment to public office. (As to required qualifications for voting and holding office, see Const., art. 4, secs. 1 and 4.)

32. Jury service—eligibility of women

In suits at common law before a justice where a jury is required, such jury may consist of six "persons" (Const., art. 3, sec. 13). Trials of crimes and misdemeanors, unless otherwise provided, shall be by a jury of 12 "men" (Const., art. 3, sec. 14).

Only "male persons" can qualify for service on trial juries (sec. 5261).

The list for grand jurors must be made up from "men" who meet the statutory qualifications for such service (sec. 5287).

Note: The 1955 West Virginia Legislature adopted a resolution providing for amendment of the State Constitution:

"Regardless of sex, all persons, who are otherwise qualified, shall be eligible to serve as petit jurors, in both civil and criminal cases, as grand jurors and as coroner's jurors." House Joint Resolution No. 2, submitted by Acts 1955, c. 22.

A referendum on this proposal was scheduled for November 1956.

¹⁹ *Beuhring v. Beuhring* (1931), 111 W. Va. 135; 161 S. E. 25.

²⁰ *Carty v. Carty* (1911), 70 W. Va. 146, 149; 73 S. E. 310; 38 L. R. A. (N. S.) 297.