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Report on the Legal Status of Women

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References:

- Constitution of Maine.
- Revised Statutes of Maine. 1930
- Session Laws, 1933 and 1935.
- Maine Reports, through vol. 133.
- Atlantic Reporter, through vol. 173.

Explanatory Note

References to the State Constitution are indicated by paranthetical insertions of section numbers following the aboreviations Const., as (Const., Sec. 177). placed after the related subject matter.

References to the Revised Statutes of Maine appear in parentheses, showing chapter, section, and page numbers, as (Ch.74, Sec. 3. p. 1151.)

Session Laws are referred to by year of enactment and page number, as '1933, Ch.1, Sec. 37. p.12).

Case citations, definitely construing statutes or declaring judicial policy in the absence of express statutory prevision, are indicated by numerical footnote references, and appear immediately after the related paragraph. The year of decision is inserted after the case title.

Report of the Legal Status of Women by States

Contract Rights-General

1. What is the statutory age of majority for both men and women?

In the absence of express definition, other than prescribing the voting age as twenty-one years and over (Const., art. II, sec. 1) (Ch. 6, sec. 2, p. 141), the common-law rule of twenty-one years for both sexes governs generally, but see Paragraph 2 below.

2. Can a woman, either married or single, under the age of twenty-one years convey or mortgage her real estate or make contracts? If so under what circumstances?

As to the married woman, yes. The statute provides that "A married woman, of any age, may own in her own right real and personal estate acquired by descent, gift, or purchase; and may manage, sell, convey, and devise the same by will, without the joinder or assent of the husband; but such conveyance without the joinder or assent of the husband, shall not bar his right and interest by descent in the estate so conveyed" (Ch.74, sec. 1, p. 1150). And the court, considering this statute, has held it to mean that the sale of real estate by a married infant is not voidable on the ground of infancy. 1/

1/Fields v. Mitchell 1914 112 Me. 368. 370. 92 Atl. 293. (Hist.)

As to single women who are minors, their contracts are good only if ratified by them when they attain majority, unless the contract be for necessaries, or real estate of which the minor has received the title and retains the benefit (Ch.123, sec. 2, p. 1492).

Husband and wife-contract rights of wife.

3. May a married woman enter into any and all forms of contract, including conveyance of real estate, without her husband's consent? What restrictions exist, if any?

A married woman may contract with reference to her separate estate, (Ch.74, secs. 1-4, 6, pp. 1150-1151.) This power has been construed to include contracts with her husband. She may enforce her legal contract against a stranger to the same extent as though she were unmarried, but she is likewise liable personally on such contracts. She may not enforce such a contract against her husband by an action at law, nor is she on the other hand liable to her husband in an action at law on account of such contract. However, the equity courts will entertain suits founded on this statutory contract right. 1/

1/ Perkins v. Blethen (1911) 107 Me. 443, 446, 78 Atl. 574.

She cannot make a valid conveyance, without the joinder of her husband, of any real estate which he has directly conveyed to her, except real estate conveyed as security or in payment of a debt actually due her by her husband. (Ch. 74, sec. 1, p. 1150.) 2/3/

2/ Gate v. Christian (1914) 112 Me. 427, 430, 92 Atl. 489.

3/ Perkins v. Morse (1885) 78 Me. 17. 2 Atl. 130.

Nor can she enter into a partnership contract with her husband.

4/ Haggett v. Hurley (1898) 91 Me. 502 40 Atl. 561. (Histo.)

4. Does the wife own her wages earned outside her home?

Yes, She may receive the wages of her personal labor, not performed for her own family, maintain an action therefor in her own name, and hold them in her own right, against her husband or any other person (Ch.74, sec. 3, p. 1151).

But the wife may not sue her husband directly for services performed by her for him. 10 nor can an assignee of her claim maintain. (1)Mott v. Mott (1911) 107 Me. 481.483. 78 Atl. 900.)

such a suit. 2)

(2/ Perkins v. Blethen (1911) 107 Me. 443.448. 78 Atl. 574.)

5. Can the wife be made to pay for family necessaries ordered by her?

Yes, if contracted for in her own name. (Ch. 74, sec. 4. p. 1151).

Note This section of the statute provides that suit may be maintained against a married woman, and her property held liable for debts and damages as if she were single, but she cannot be arrested. (Italics supplied.) The court construes this to mean that she shall not be liable to arrest, commenting that this provision is for the benefit of women, and for the benefit of organized society in that the protection of wives and mothers from such harassment is essential to maintaining the home in integrity, as the beginning and end of all government. 1)

(1/ Bragg v. Hatfield (1925) 124 Me. 391.392. 130 Atl. 233.)

6. May a married women conduct a business, trade, occupation, or profession in her own right, without court procedure?

Yes. (Ch. 74, secs. 1-5, pp. 1150-1151.) See Paragraph 3.

Husband and Wife- roperty Rights

7. Do spouses have an equal interest in each other's estate at the death of either, as to (1) real estate: (2) personal property?

Yes. Of real estate owned by an intestate spouse at death, or during marriage, the right to which has not been relinquished by the surviving spouse, such survivor takes absolutely one-third part if children

also survive. (This one-third descends free from payment of debts.) If no issue survive, the living spouse takes one-half, and if no kindred such spouse takes the whole. (Ch. 39, sec. 1, subsec. I, p. 1243.) 1/ (1/ Longley v. Longley (1899) 92 Me. 395 42 Atl. 798.

The personal property of an intestate, except that portion assigned to his widow by law and by the judge of probate, as an allowance, shall be applied first to payment of debts of the deceased and expenses of administration. The remaining portion is then distributed according to the rules for real estate descent, described above.

(Ch. 89, sec. 20, p. 1248.) 2)

(2/) Fogg's Estate (1909) 105 Me. 489 74 Atl. 1133.)

Money received for life insurance on the life of an intestate spouse, less the preceding three years' premiums with interest, is not subject to debts if a spouse or children survive. In this case, the living spouse takes one-third the proceeds, or if no children survive, the entire proceeds. (Ch. 89, sec. 21, p. 1248; ch. 76, sec. 48, subsec. IV, p. 1177.)

8. Do spouses have a one-half interest in, and equal control over, all property acquired after marriage by either or both of them with testamentary power in each spouse to distribute his or her one-half interest?

No. The court has held that though a woman assists her husband in his business, even in caring for money which is the product of their joint labor, this does not make any part of the money her property; that the enabling statutes (Married Women's Act) do not absolve a wife from the duty to render to her husband such services in his household as are commonly expected of a married woman in her station of life. 1/ (1/ Mott v. Mott (1911) 107 Me. 481. 78 Atl. 900; Holmes v. Vigue (1934) 133 Me. 50 173 Atl. 816.

9. Does the husband have any authority over the wife's separate estate?

Is it liable for his debts?

Generally, no. (Ch. 74, sec. 2, p. 1150) But certain exceptions exist in the statute declaring the rights of married women to hold and dispose of their property; The husband must join in conveying any real estate which he had conveyed directly to her unless he so conveyed it as security or satisfaction for debt to her. And when payment was made from the property of her husband for property so conveyed to her, or it was conveyed by him to her without a valuable consideration, it may be taken as the husband's property to satisfy debts contracted before such purchase. (Ch. 74, sec. 1, p. 1150).

A married woman may release to her husband the right to control her property or any part of it, and to dispose of the income for their mutual benefit, and she may in writing revoke such release. (Ch. 74, sec. 2, p. 1150).

10. Does the wife after marriage own the clothes and other personal property owned before marriage?

Yes. (Ch. 74, sec. 2, p. 1150).

11. Is the wife, after the husband's death, given the family clothing?

Yes. (Ch. 76, sec. 48, subsecs. I, II, p. 1177.) In addition, there is allowed to the widow so much of the personal estate of an intestate spouse or of an insolvent estate, as the court considers necessary according to the family's need and social station. (Ch. 78, sec. 14, p. 1192).

12. What interest does a second or subsequent wife have in her deceased husband's estate. If no children have been born to them?

Her interest does not differ from that of a first or prior wife. See Paragraph 7. (Ch. 89, sec. 1, subsec. 1, p. 1243.)

13. Does a second or subsequent husband have an interest in his wife's real estate received from her former husband, if there are living children of the wife's former husband?

Yes. He is entitled to the same share in the wife's property that a prior or first husband could take. The statute makes no distinction. See Paragraph 7.

14. What restrictions, if any, attach to the distribution of her property under her will by a married woman?

None. A married woman or widow of any age, if of sound mind, may dispose of her real and personal estate by will (Ch. 88, sec. 1, p. 1240)

15. Does each spouse have an alternative from accepting the provisions of the other's will as to property settlement on the death of the other?

Yes. (Ch. 89, secs. 13-14. p. 1246) Instead of the provision in the will, either spouse who survives may elect to take his or her statutory share under distribution of the real and personal estate.

EXEMPTIONS AND HOMESTEAD RIGHTS.

16. Are comparable exemptions from execution and for homestead allowed men and women, both single and married?

Yes. (Ch. 95, secs. 68-70, p. 1321.) (1935, ch. 187, p. 399.)

PARENT AND CHILD*-PROPERTY RIGHTS

17. Do parents inherit equally from their deceased child?

Yes. (Ch. 89, sec. 1, subsec. III, p. 1243.)

18. Does the mother share equally with the father in the children's earnings?

Yes. (Ch. 72, sec. 43, p. 1141). See also paragraph 20.

19. Does the mother inherit property from her child born out of wedlock?

If so, to what extent?

Yes, as if the child were legitimate. (Ch. 89, sec. 3, p. 1244)1/

(1/Messer v. Jones (1896) 88 Me. 349, 355, 356, 34 Atl. 187.)

GUARDIANSHIP

20. Does the mother share equally with the father in the guardianship of the children?

Yes. The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of such children; and neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children. (Ch. 72, sec. 43, p. 1141.)

21. Can the father will away from the mother the custody of the children

No. See paragraph 20.

22. Have the natural mother and father an equal legal responsibility for the support of their child born out of wedlock?

Yes, if sufficient proof is presented in a bastardy proceeding to convince a jury of the father's identity, he is adjudged responsible for, and charged with, the maintenance of the child, with the assistance of the mother, as the court orders. Bond for his performance of the court's decree is required. (Ch. 111, secs. 1-7 p. 1447.)

MARRIAGE-THE CONTRACT

23. Have common-law marriages been abolished?

There is no express provision in the statute as to recognition or abrogation of such marriages. However, a penalty of one hundred dollars is laid for contracting a marriage contrary to the statutory requirements for formal proceedings. (Ch. 72, sec. 14, p. 1134.) And residents of the State intending to be joined in marriage shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted. (Ch. 72, sec. 4, p. 1131.)

24. What are the ages at which men and women respectively may marry
(1) without parental consent (2) with consent of parents or guardian (3) what are the ages under which a marriage is void?

Men at twenty-one and women at eighteen years may marry without parental consent. No certificate of record of intentions may be issued to a man under twenty-one or to a girl under eighteen without the written consent of their parents or guardians, if any living.

Nor may such certificate be issued to persons under sixteen years of age without their parents' or guardians' written consent, and without the clerk's notification in writing to the probate judge in the country of the parties' residence, that such statement of intentions has been filed. The Judge may in the interest of public welfare, order that no such certificate shall issue. (1933, ch. 12, p. 165.) Below the ages of fourteen years for the male and twelve for the female, there is no capacity for consent to marriage, under common-law rule, which prevails in the absence of an express statute.

25. Does the law provide for a health certificate before a marriage license can be issued?

The health and Welfare Laws provide that no person having syphilis shall marry until he has a certificate from the attending physician or physicians that he is cured.

Every physician must keep a record of all cases of syphilis that come under his observation and care, and shall use reasonable means to ascertain the intention of syphilitic patients as to marriage. If he discovers such intention to marry, or believes the patient intends to marry, he must notify the local health authority where the patient resides, and such health authority is empowered and directed to notify the other party to the intended marriage.

Punishment by fine or imprisonment or both attaches to failure to comply with this law and municipal courts and trial justices have jurisdiction, concurrently with the superior court, over such violation.

(1933, ch. 1, secs. 37-39, p. 12.)

26. Does the State law prohibit the evasion of marriage laws of other States?

No, But if residents of Maine have their marriage

solemnized elsewhere in order to evade the statutory provisions declaring marriages void because of kinship, insanity or idiocy, or polygamy, and later return to reside in Maine, the marriage is void. (Ch.72, sec. 9, p. 1133.)

ANNULMENT

27. Upon what grounds may a marriage be annulled?

Marriages prohibited because of kinship, nonage, insanity or idocy, or polygamy, if solemnized within the State are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without special judicial proceedings in either case. (Ch. 73, sec. 1, p. 1147.) However, the statute provides that when the validity of a marriage is in doubt, either party may file a libel as for divorce; and the court shall decree it annulled or affirmed according to the proof. Such a decree does not affect the rights of the party complained against unless he was personally notified to answer, or did answer to the libel. (Ch. 74, sec. 15, p. 1150) See also Paragraph 24. 1/ 24

(1/ Unity v. Belgrade (1884) 76 Me. 419, 422.)

(2) Winslow v. Troy (1902) 97 Me. 130, 132, 53 Atl. 1008.

DIVORCE

28. What are the legal grounds for divorce, and are they the same for both spouses?

The injured party may be granted an absolute divorce for any of the following causes: Adultery, impotence, extreme cruelty, utter desertion for three consecutive years immediately preceding the filing of the petition, gross and confirmed habits of intoxication from use of liquors or drugs, or cruel and abusive treatment.

A wife may be granted an absolute divorce from her husband who, though sufficiently able to provide suitable maintenance for her, grossly or wantonly and cruelly refuses or neglects to do so. (Ch.73, sec. 2, p. 1147.)

CIVIL RIGHTS - LEGAL RESIDENCE

29. Domicile -Are married woman authorized under the law to establish their own legal residence or domicile. - for such purposes as voting, serving on juries or holding office?

Husband and wife may have separate residence for voting, office-holding, or jury service. (Ch.6, sec. 5, p. 142.)

PUBLIC OFFICE

30. Are women equally eligible with men for public office or State employment?

Yes. The statute provides that no citizens of the United States having a right to vote in this State shall be denied the right to hold any civil office under this State or any subdivision thereof on account of sex. (Ch. 6, sec. 4, p. 141.)

(Historic interest attaches to requested Opinions of the Supreme Judicial Court Justices on this point, found in 62 Maine 596, rendered 1874, and in 119 Maine 605, rendered 1921.)

JURY SERVICE.

31. Are women eligible for jury service, and is it compulsory?

Yes, and on the same terms as men. No person shall be disqualified by reason of sex. (Ch. 120, sec. 3, p. 1481)

Witnesses

32. Are married women equally competent with their husbands to testify in both civil and criminal actions?

Yes. Under the statute, the husband or wife of either party may be a witness in any civil suit or proceeding at law or in equity. (Ch. 96, sec. 114, & 1347.) Also, under criminal procedure, the husband or wife of the accused is a competent witness. (Ch. 146, sec. 19 p. 1656.)

CIVIC EMPLOYMENT - GENERAL

33. Do you know of any existing or proposed State Laws, county or municipal ordinance or rulings of school boards, which discriminate against the employment of women?

34. Do you know of any constitutional amendments pending, or laws proposed which would materially affect the present legal or civil status of women in your State?

35. If you know of inequalities of law or practice, not brought out by the foregoing questions will you enumerate them, giving source of your information in each instance?

SSW
HAMMERMILL