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1917
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THE RIGHTS
OF MARRIED WOMEN
IN MASSACHUSETTS

BY

Mrs. D. Bridgman

1917.

THE RIGHTS OF MARRIED WOMEN IN MAINE.

A Thesis

Submitted in Partial Fulfillment of the
Requirements for the Degree of
Bachelor of Laws.

By

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College of Law.

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Bangor.

June 1917.

THE RIGHTS OF MARRIED WOMEN IN MAINE.

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THE RIGHTS OF MARRIED WOMEN IN MAINE.

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Introduction

In dealing with the subject of married women's rights, her duties and liabilities, although my topic deals with the same in Maine, a good foundation must be laid in order to see how the legal status of feme covert has developed to the present day.

In primitive times among people yet rude and barbarious, marriage as now recognized, did not as a rule exist. At first, promiscuous living was the custom, and even when the relation of husband and wife became more or less recognized, the woman was practically a slave, the captive purchased of her master, and mutual rights and duties were either unknown, or at most but crudely suggested by local customs. The rights were all with the strong - the man; the duties belonged to the weak, - the woman. His control of the wife's person and his dominion over the property she possessed began to be regarded as the law. There was an exception to the above rule, recognized among the Indian tribes. These allowed no rights in each other's property and no contractual disability attached to the wife.

Freeman v. Foster, 55 Mo. 510.

This development of married women's rights took two courses, namely:

1. Women's Rights in Europe and America.

2. Women's Rights in Oriental and Polygamous Countries.

In the early Roman law, under the doctrine of marius, the marital power of the husband was absolute.

The wife's identity was completely merged in that of the husband. He could chastise, sell, or even kill the wife. This last is doubtful to some writers. Sale referred to just the sale of her labor - she was not a slave.

The husband became possessed and owner of all the property the wife might have, and he was entitled to all her labor and earnings. In contemplation of law she was the child of her husband, filiae loco, a sister, legally, of her own off-spring. Her only rights were her support and the share of her husband's property at his death, as one of his heirs.

During the later period of Roman law, under the doctrine of consensual marriage, so-called "free marriage," husband and wife were regarded as partners, and the marital rights of husbands were those of the jus gentium, namely, the right to choose the domicile, right of her society (consortium), right of regulating household expenses, and right of custody and education of his children. It was the husband's legal duty to support her, but he had no legal control over her actions. By the common law rule of England, the husband and wife are in

general but one person. In Equity, the wife's individual existence and right to control, enjoy, or dispose of her separate property is established.

The mutual rights, duties, and liabilities of husband and wife depends necessarily upon the general character of the legal relation that exists between them. This relation may arise from a fundamental conception inherent in the customs or the common law of the people, as I have shown, or may result from express legislation.

Statutes removed most of these common law disabilities. The rules are different in the several states, but no where do all the rigorous old rules hold.

Springer v. Berry, 47 Maine 330.

The law governs the rights of the wife in places where the land lies and in absence of contract rights as to personal property, the place where married and by the laws in force at that time.

I. Marriage.

A. Who May Marry.

As Maine does not require a physical examination, it seems, at first thought, that any two persons, no matter how poorly fitted for matrimony, could marry. But, nevertheless, there are some exceptions.

Children must have arrived at the age of consent, which in this state is fifteen years of age. A marriage between two

infants of or above this age is valid, even without the consent of the parents or guardians, although the statute imposes a penalty upon any magistrate or minister who performs the ceremony in such case.

The Act of 1786 provided that no white person should marry a negro. Under this act, the court held that a man with one-sixteenth Indian blood was a white person, and consequently his marriage to a mulatto was void.

Bailey v. Fisk, 34 Maine 77.

B. What Marriages Are Void.

No insane person or idiot is capable of contracting marriage. No woman having a former husband living (unless she has been divorced from him) can contract another marriage.

Marriage where husband has no mental capacity is void ab initio.

Winslow v. Troy, 97 Maine 130.

Not only are marriages within the degrees of consanguinity mentioned above prohibited, but parties so marrying render themselves liable to imprisonment. Such marriages are void without any decree of divorce or other legal process.

An exception to the above rule about second marriages is where the husband has been absent from this state seven years, and the wife has honest reasons to believe him dead, not having heard from him during that time. She may marry again and not be guilty of polygamy if her first husband should return, for

in the eyes of the law, he is civilly dead.

Contracts of marriage with your own blood relations are not only prohibited but void. It is against public policy and is detrimental to the strength and health of a nation.

C. What Marriages are Voidable.

Fraud vitiates all contracts and this includes those of marriage. Such marriage may be deemed null and void by application to the court; so if a marriage is supposed to be void, or the validity thereof is doubted for fraud or otherwise, either party may file a libel for annulling the same.

So also, when the validity is doubted or denied by either party, the other party may file a libel for affirming the marriage.

II. Contractual Powers.

A. Ante-Nuptial Contracts.

As a general rule, marriage nullifies any contract made by the parties before marriage. Therefore, a note given by the wife to the husband before marriage is nullified by the marriage. But certain contracts between the two are good even after coverture.

1. Contracts to be performed after coverture is determined.

2. Marriage settlement made in contemplation and consideration of marriage.

3. Contract made by one to the other in an administrative capacity.

4. Contract made by one as trustee for the other.

The contract must be enforced in Equity, where specific performance may be decreed, if it was entered into understandingly, but not in favor of a party whose part of the contract has not been performed. This contract may claim that the wife shall make no claim on her husband's estate after his death, but this is no bar to a claim in the Probate Court for an allowance for necessaries.

But by modern statutes, the husband upon marriage does not become liable for the ante-nuptial contracts or torts of the wife. See R. S. 1903, Chap. 63, Sec. 4, which reads:

" A husband married since April 26, 1905, is not liable for the debts of his wife contracted before marriage, nor is he liable for those contracted afterwards 'in her own name,' for any lawful purpose, nor is he liable for her torts committed after April 26, 1883, in which he takes no part, but she is liable in all such cases; a suit may be maintained against her therefor and her property may be attached and taken on execution for such debts and for damages for such torts, as if she were sole, but she cannot be arrested."

The words 'in her own name' were not in the Act of 1866, and seem to have been added to bring that act into harmony with preceding acts. They seem to limit her power to contract to such contracts as she may make in her own name. While mere consolidation, on condensation of the language of a statute

in revision, is not to be presumed to indicate a change of meaning, the addition of restrictive words not found in the original statute may indicate an intention or understanding that the statute is restricted in its effect. The words 'in her own name' seem to indicate that the wife's power to contract is not unlimited,- that it is confined to her separate business or estate. This view has been affirmed in Hobbs v. Hobbs, 70 Maine 381, and in Cummings v. Everett, 82 Maine 260.

Equity will enforce ante-nuptial settlements, and especially is this true in the case of a widow's claim for an allowance, inasmuch as an ante-nuptial agreement is no defense in a court of probate to her petition for an allowance.

Bright v. Chapman, 105 Maine 62.

Revised Statutes of Maine, 1903, Chapter 63, Section 6, among other things, provides that " a husband and wife by a marriage settlement executed in the presence of two witnesses before marriage, may determine what rights each shall have in the other's estate during the marriage and after its dissolution by death, and may bar each other of all rights in their respective estates not so secured to them," is restricted to the rights which either party to the marriage settlement may have in the estate of the other.

Bright v. Chapman, 105 Maine 62.

B. Post-Nuptial Contracts.

In Maine, a married woman may make any lawful contract.

Maine Revised Statutes, 1903, Chap. 63, Sec. 4.

Since the above is true, any married woman may become a surety for her husband.

Mayo v. Hutchinson, 57 Maine 546.

If the husband owes the wife money she can prove it before the commissioners, if he goes into bankruptcy.

Weeks & Potter Co. v. Elliott, 93 Maine 286.

The wife cannot maintain an action against her husband even for services as cook in his logging operations; and when in such action the fact of coverture appears, the action must be dismissed, even though the husband does not appear and is defaulted.

Copp v. Copp, 103 Maine 51.

C. Contracts of Married Women.

A woman can make any lawful contract in Maine. Any legal contract she may make with a stranger can be enforced by her in her own name free from the joinder of her husband, and she is personally liable thereon.

Perkins v. Blethen, 107 Maine 443.

A promise by the wife to pay the vendor for articles purchased by the husband cannot be logically inferred from the circumstances that the articles ultimately came into her hands.

Steward v. Church, 108 Maine 83.

D. Contracts between Husband and Wife.

By the Statutes of Maine allowing a married woman to make

any lawful contract "as if unmarried," it is held that she can convey directly to her husband.

Hewett v. Adams, 50 Maine 371.

The reverse is also true - the husband can convey directly to his wife.

Savage v. Savage, 80 Maine 472.

Revised Statutes of Maine, 1903, Chapter 63, Section 5, declares, among other things, that a wife may prosecute or defend suits at law or in equity, in tort or contract, without the joinder of her husband for the preservation of her property or personal rights, or for redress of her injuries - or she may join her husband, but he acquires no rights nor can he discharge any such suit without the written consent of the wife.

Actions at law do not lie between husband and wife on contracts between them.

Perkins v. Blethen, 107 Maine 443.

She must go into equity as the right to contract with her husband is wholly a creation of the court of equity.

The legal disability of a married woman existing at common law was not removed by Section 5, Chapter 63, of the Revised Statutes of Maine, 1903, that is, allowing either her or her husband to sue each other.

Spiller v. Close, 110 Maine 302.

See also Greenwood v. Greenwood, 113 Maine 226.

E. Separate Business or Estate.

1. Creation.

To create a separate estate, the intent must clearly appear. The words used in the grant must show that the intention was that the wife should take, and that the husband should not. No trustee need be named for the wife. If no one is named trustee, equity will nevertheless treat the property as the wife's separate estate and hold the husband as trustee. This is purely a creation of equity and must be enforceable in equity. The reason for this was to keep property out of the husband's hands. A man whose daughter was married might want to give her his property - free from the clutches of perhaps a spendthrift husband - so equity stepped in and created separate estates.

2. Wife's Right to Income of Separate Estate.

The sole object of creating these estates was to keep her property from the husband. If he, the husband, was allowed to deal with the income - the same would be defeated. Of course, since the modern statutes giving a married woman the use of all her property were enacted, the necessity of this separate estate is not so great.

3. Right to Convey.

The wife may convey this property by deed or will. Of

course, if realty, upon her death intestate, it goes to her heirs subject to the husband's title to one-third by descent. But if personalty, it goes to husband in his marital right or as administrator.

4. Power to Bind Separate Estate.

A married woman can bind her separate estate by contract. Also a wife can sue alone in equity to protect her estate. A wife may even sue her husband in equity in regard to this estate, but not at common law.

Crowther v. Crowther, 55 Maine 358.

F. Partnership.

The Statute giving a married woman enlarged powers did not include those of partnership with her husband. The primary reason for passing these statutes was for the protection of the property of the wife. Since one partner can bind the whole and each is liable for the whole partnership debt, if such partnership was allowed, the statute would be defeated.

Haggett v. Hurley, 91 Maine 543.

G. Agency.

A husband can act as agent for his wife and vice versa, under the modern statutes. A wife can bind her husband's estate only on the ground of agency. This may come about in two ways:-

(a) Where husband has held his wife out as his agent.

(b) Where the wife becomes agent by necessity.

Where a woman buys goods on the credit of her husband, there is a presumption that this credit continues until the husband revokes it. An exception to this rule is where the purchases of the wife are excessive - as \$5000. for clothes and jewelry where her husband was only earning \$1200. Extravagance of the bill alone would repel the inference of agency.

In case the husband wrongfully refuses to provide for the wife, she then becomes an agent by necessity. This is true even when she is living apart from the husband for his fault, or by mutual agreement, or where the wife agrees to accept a stipulated sum.

Thorpe v. Shapleigh, 67 Maine 235.

The question arises, what are necessities? The courts are not agreed on this point, but by the best ruling, it seems, the word 'necessaries' means the things that are essential to the health and comfort according to the rank and fortune of her husband. Another way of stating it - the things that are necessary for one in her station of life to have. Of course, the presumption of agency is always rebuttable.

Steinfeld v. Girard, 103 Maine 151.

Revised Statutes of Maine, 1903, Chapter 63, Section 7, provides:- "Whenever a man, having a wife, a minor child, or both, residing in this state and from whom he lives apart, and being of sufficient ability, or being able to labor and provide for them, wilfully and without reasonable cause, refuses or neglects to provide for them, suitable maintenance, the Supreme

Judicial Court, Superior Courts, Bangor Municipal Court, in term time or vacation, in the county where the wife or children reside, on petition of the wife for herself, and for such children, or such children, by their guardian, after such notice to the husband or father, as it may order, and hearing, may order him to contribute to the support of his wife, if the separation was without her fault, and to the support of such children, such sums payable weekly, monthly, or quarterly, as deemed necessary.

A wife may be held liable to parties furnishing materials for the furnishing and repairing of her dwelling house, sold upon the husband's credit under the belief that he was the owner, when it appears that he acted as her agent.

Manufacturing Co. v. Burnham, 89 Maine 538.

The fact that the wife authorized her husband to let a farm owned by her does not justify an inference that he was her agent in carrying on the farm.

Steward v. Church, 108 Maine 83.

III. Real Estate.

A. Conveyance of Real Estate.

At common law, a married woman could not, by a conveyance, either transfer her own property, or bar her right to dower in the real property of her husband.

But all this has been changed by modern statutes.

Revised Statutes of Maine, 1903, Chapter 63, Sec. 1,

reads:

"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 consent of husband will not bar his right and interest by descent in the estate so conveyed. Real estate conveyed directly to her by her husband cannot be conveyed by her without the joinder of her husband, except real estate conveyed to her as security or in payment of a bona fide debt, actually due to her from her husband. When payment was made for property conveyed to her from the property of her husband, or it was conveyed by him to her without a valuable consideration, it may be taken as the property of her husband to pay his debts contracted before such purchase.

Fletcher v. Tuttle, 97 Maine 494, s.c., 54 Atl.1110.

Since the Act of 1844, a husband by marriage acquires no right to any property of his wife.

It is manifest that these statutes have wrought great modifications and radical changes in the relative property rights of husband and wife. In law they are no longer one person, and their interests in property are no longer identical but separate and independent. Under these statutes, the wife is invested with greater privileges and weighted with greater responsibilities and liabilities than before. The old common law rule which created estates by the entirety is irreconcilable with both the letter and spirit of these statutes. It had its origin in feudal institutions and social conditions

which were superseded centuries ago by the more enlightened principles of a progressive civilization. It is now repugnant to the American idea of the enjoyment and devolution of property and to the true theory of the marriage relation. " The reason of the law," says Lord Coke, "is the life of the law; and ces-sante ratione lex ipsa cessat."

Brooks v. Cedar Brook, etc. Co., 82 Maine 22.

A conveyance of real estate made by a married woman under the age of twenty-one cannot be disaffirmed by her after arriving at her majority, nor the property recovered back.

Fields v. Mitchell, 112 Maine 368.

There is a presumption that money paid by the husband for property conveyed to the wife is a gift. Of course, this, like any presumption, may be rebutted.

Wentworth v. Shibles, 89 Maine 167.

In Maine, where a conveyance was made to the wife, and she gave a mortgage back, the court construed this as one transaction and both were void.

Newbegin v. Langley, 39 Maine 200.

Of course, the above would not come up now as modern statutes have changed all this, but it may help to illustrate how completely a married woman was at the mercy of her husband.

In Beale v. Knowles, 45 Maine 479, it is held that a wife's deed of her realty during coverture is void. In this same case it was held that a creditor of her husband could levy on the land in the hands of the wife's grantee and recover same for the purposes of applying it to the debts of her husband.

See Revised Statutes of Maine, 1903, Chap. 63, Sec.1.

IV. Criminal Liability - Torts - Arrest.

A. Criminal Liability.

There is a presumption that a wife who commits a criminal act in the presence of her husband, is not acting of her own free will, but under his coercion and she will not be liable for the crime, but he will. This exemption of the wife seems to extend at common law to all crimes except treason, murder, arson, keeping a house of ill-fame, and perhaps, robbery. This presumption may be rebutted, but it serves to start the evidence to moving.

There is no presumption of coercion if the criminal act is committed in the absence of the husband. The wife can then be indicted alone, though she acts by his order or direction or jointly with her husband. But if the husband was near enough for the wife to act under his immediate influence and control, though not in the same room, he was not absent within the meaning of the law. If a married woman illegally keeps intoxicating liquors for sale, her husband will be liable if he has knowledge of the fact and of her intent, if the circumstances are such that she could be considered his agent, as by living in the same house, and if he does not use reasonable means to prevent her, although he has no interest in the stock in trade or the profits, and although she is carrying on business on her own account, having filed the certificate required by law

in her own name.

Modern legislation has not changed the criminal liability of the wife in a single particle.

Revised Statutes of Maine, 1903, Chap. 120, Sec. 1 and 2

Whoever wilfully and maliciously sets fire to a dwelling house owned by himself wholly or in part or burning public or private buildings or other buildings, vessels, bridges, or produce trees, the wife in such a case is liable, although the property burned is her husband's.

B. Torts.

Maine Revised Statutes, 1903, Chapter 63, Section 4, provided that the husband shall not be liable for the torts of the wife committed after April 26, 1883, in which he takes no part; but she is liable in all such cases. A suit may be maintained against her therefor and her property may be attached and taken on execution for such debts and for damages for such torts, as if she were sole, but she cannot be arrested.

There is a presumption that such tort was committed under the coercion of her husband, but it is rebuttable.

Marshall v. Oakes, 51 Maine 308.

C. Right to Bring or Defend Suits.

In order to maintain an action against another woman for criminal conversation with her husband, the wife must show more than intercourse. She must show an enticing away or alienation

of affections of her husband.

Doe v. Roe, 82 Maine 503, s.c., 8 L. R. A. 833.

The reason for this is that the object of this action rests upon defilement of the marriage bed and uncertainty of offspring, but where the husband does not bring the woman to his home, there is no danger.

Morgan v. Martin, 92 Maine 190.

But the Laws of Maine of 1913, Chapter 33, page 27, Section I, of "An Act to Grant Additional Rights to Married Women," provide that whoever, being a female person more than eighteen years of age, debauches and carnally knows, carries on criminal conversation with, alienates the affections of, the husband of any married woman; or by any acts, enticements and inducements deprives any married woman of the aid, comfort, and society of her husband, shall be liable in damages to said married woman in an action on the case brought by her within three years after the discovery of such offense.

See Revised Statutes of Maine, 1903, Chapter 103, Sec.14.

A married woman may prosecute and defend suits at law and in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried, or may prosecute such suits jointly with her husband, and the husband shall not settle or discharge any such action or cause of action without the written consent of the wife.

Neither of them can be arrested on such writ or execution,

nor can he alone maintain an action respecting his wife's property.

Revised Statutes of Maine, 1903, Chap. 63, Sec. 5.

The wife could not sue alone for malicious prosecution even though her husband was in California and had been there six years.

Laughlin v. Eaton, 54 Maine 156.

The wife may prove a claim against the estate of her husband in insolvency, provided she goes before the commissioner.

Weeks & Potter Co. v. Elliott, 93 Maine 156.

The wife is accountable to the husband's creditors for his earnings appropriated by her, though used in permanent additions to her real estate. Nor can she set off rent as against him while living on her real estate, in the absence of agreement by him to pay rent.

Trefethen v. Lyman, 90 Maine 376.

The wife is liable for materials purchased by the husband for her house, under her general authority to make repairs.

Maxcy Mfg. Co. v. Burnham, 89 Maine 538.

Revised Statutes of Maine, 1903, Chapter 64, Sec. 4., reads: A husband may be joined as a nominal party defendant with his wife in an action for a tort of the wife in which he took no part and which is alleged to have been committed by her alone. In such case the property of the wife alone is subject to attachment and sale on execution, and no execution can issue against the husband or his property.

Marcus v. Rovinsky, 95 Maine 106.

A married woman, who is living with her husband, is not entitled, in an action to recover for personal injuries, to recover for loss of ability to do domestic labor in their home, nor can she recover for expenses for medical and surgical treatment, unless she has herself paid, or has personally held herself responsible for them.

Felker v. B. R. & E. Co., 112 Maine 255.

It does not necessarily follow that a wife who is riding with her husband, and who is herself in the exercise of reasonable care, is legally responsible for the negligence of her husband as to acts over which she has no control.

Denio v. St. Ry. Company, 104 Maine 39.

An action brought by a married woman to recover of the winner treble the amount of money lost by her husband by gambling is not a suit for the preservation and protection of her property, or her personal rights, or the redress of her injuries.

Spiller v. Close, 110 Maine 302.

The above case was brought under Revised Statutes of Maine, 1903, Chapter 126, Section 8, authorizing "any other person" to bring the action at bar, and was obviously not enacted for the purpose of removing the incompetency of the "other person" who was empowered to prosecute the suit.

At common law and independent of statute, no right of action exists for loss of life of husband.

Revised Statutes of Maine, 1903, Chapter 89, Sections 9 and 10, giving a right of action for wrongful death for the benefit of specified relatives, which vests immediately, and

if such cause vests in the widow, she cannot transfer it, and her death or failure to sue will not transfer this right to other beneficiaries.

Hammond v. St. Ry. Co., 106 Maine 209.

A verdict for \$1050. for the death of plaintiff's husband, held not to be excessive.

Naiczanko v. Paper Co., 106 Maine 108.

V. Divorce.

It is too bad that Maine can not boast of a record such as had Greece and Rome. Plutarch says that for five hundred years after Rome was founded, it was not scandalized by a single divorce.

Times have changed since the days of early Rome. To the layman, divorce has seemed a farce; and only to those who have made a study and understand and appreciate the laws governing divorces will their true significance and worth be apparent.

In ancient Britain, in case of divorce, if the couple had children, the husband took the oldest and youngest, and the wife, those in between; pigs went to the man, sheep to the woman; the wife retained the milk vessels while the husband kept the mead brewing machinery. We see here that Ancient Britain recognized the equality of woman and man.

At one time a divorce was easily obtained, but now the courts are making the rules more strict. In Maine a libel could be brought and a decree obtained at the same term of

court. Now you have to enter your libel at one term and wait until the next term before you can get your decree. The following are some of the causes of divorce from the bonds of matrimony in this state:-

1. Adultery
2. Impotency of either Party.
3. If either party has separated from the other without his or her consent, and united with some religious society that does not favor the relation of husband and wife.
4. When the husband is serving a life sentence in prison.
5. Extreme cruelty.
6. Cruel and abusive treatment.
7. Gross and confirmed habits of intoxication.
8. Desertion.
9. When husband, being of sufficient ability, grossly or wantonly neglects to provide a suitable maintenance for her.

Revised Statutes of Maine, 1903, Chapter 62, Section 6, reads:- "Pending libel, the wife's expenses are to be paid by the husband."

Ibid., Section 7, reads:- "A court may free the wife from restraint pending the libel."

Ibid. Section 9, allows alimony and makes other provisions for wife in case of divorce for husband's fault.

Call v. Call, 65 Maine 409.

Littlefield v. Paul, 69 Maine 533.

Ibid., Section 10: When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to one-

third, in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead; and the court will allow as much of her personal estate as seems reasonable.

If a woman deserts her husband and takes her minor child with her, she cannot maintain action against the husband for the child's support after the husband has obtained a decree for desertion and no decree for support of the child having been made.

Glynn v. Glynn, 94 Maine 465.

In one case the defendant appealed from an order of the Municipal Court of Auburn requiring him to contribute to the support of his wife in accordance with R. S., 1903, Chap. 63, Sec. 7. Held, the husband had no appeal from the Municipal Court in such a case.

Cotton v. Cotton, 103 Maine 210.

An agreement between husband and wife contemplating separation and wife's support of the children, when the husband actually remained and supported his wife and children, is invalid, since the consideration resting upon separation had failed.

Greenwood v. Greenwood, 113 Maine 226.

It is well settled that if the husband abandons the wife, or by his ill treatment compels her to leave his house, he is liable for her necessaries and gives her a general credit to that extent.

Beaudette v. Martin, 113 Maine 310.

Emancipation of minors by their father is shown by his

abandonment of them, and his silent assent to their care and custody being given to the mother on divorce obtained by the mother.

Thomaston v. Greenbush, 106 Maine 242.

VI. Custody of Minor Children.

By the old common law, the minor children belonged to the husband absolutely. He could deprive the wife of seeing them, if he chose. The death of the husband did not make the widow their guardian unless he had provided for this in his will.

In Maine to-day, the husband and wife are considered joint guardians.

VII. Married Woman's Domicile.

The domicile of a married woman is the same as her husband's. Upon marriage, a woman takes the pauper settlement of her husband, if he has any in the state.

Winslow v. Troy, 97 Maine 130.

Revised Statutes of Maine, 1903, Chapter 27, Sections 1, - 2, provide that a married woman has the settlement of her husband if he has any in the state. If he has none, her own settlement is not effected by her marriage.

Legitimate children have the settlement of the father. Illegitimate children have the settlement of the mother.

A wife's pauper settlement derived from her husband continues until divorce or his death, and is not affected by his

desertion or abandonment of her.

Thomaston v. Greenbush, 106 Maine 242.

VIII. Wills.

In Maine, a married woman can make a will as if sole. She must meet all the requirements laid down in the statute.

In case the husband makes a "testimentary gift in lieu of dower," at common law, the husband had to put into the will that the gift was in lieu of dower, or else she took both.

By Revised Statutes of Maine, 1903, Chapter 77, Section 13, it is provided that this is no longer law, and the widow is held to an election. In case she refuses the bequest in the will, she must file a disclaimer in the Probate Court.

In Maine, an action of dower will not be barred until twenty years and one month. She can thus take her time before making her demand.

Bubier v. Roberts, 49 Maine 460.

Chase v. Alley, 82 Maine 234.

Prior to June 1, 1903, the wife might give away her entire personal estate and deprive the husband thereby of his distributive share in her estate.

Since June 1, 1903, quaere, as to gifts causa mortis,

Wright v. Holmes, 100 Maine 508.

The wife is not a "relative" of the husband, so as to prevent the lapse of a bequest.

Farnsworth v. Whiting, 102 Maine 296.

Nor to pledge credit of husband, even for necessaries,

if she has deserted.

Steinfeld v. Ginard, 103 Maine 151.

A wife is not a competent attesting witness to a will which contains a devise to her husband.

Clark et al., Applts., 114 Maine 105.

IX. Provisions in Case of Intestacy.

Revised Statutes of Maine, 1903, Chapter 63, Section 6, provides that when a married woman dies intestate, her property, real and personal, shall descend as provided in Revised Statutes of Maine, 1903, Chapter 77, and administration and distribution may take place accordingly.

In Chapter 77 of the Revised Statutes of Maine for 1903, are the rules laid down for "Title by Descent" which is wholly statutory. It reads -

"If a man leaves a widow and issue she, the widow, takes one third.

If no issue, she takes one half.

If no kindred, she takes the whole of the property. This property is all the husband has been seized of during coverture.

A. Rights to Property of Deceased Husband.

Up to 1895, a woman had her dower assigned to her, but she had to make a demand for same. Before her husband's death it was "dower inchoate," but after his death, "dower consummate." The widow has a right to remain in her husband's house

for a period of ninety days from his death. This was termed at common law "the widow's quarantine."

Since 1895, a widow takes by descent. Of course, dower is abolished, but anyone married and dying before 1895, is still entitled to dower.

The widow now gets a fee, one-third, in all her husband's real estate seized during coverture, and does not have to demand dower as before, but this is set off to her.

There is no dower in "wild lands" in Maine, for the only use of wild lands was to cut the wood for timber and fuel. This would be waste.

Now, by statute, there is no need of a wife joining in the deed of her husband if he sold this wild land, but if he died seized of the same, the wife would get her one-third in fee. This was wild land used in connection with the farm.

Stevens v. Owen, 25 Maine 94.

Chapter 77, Section 17, Revised Statutes of Maine, 1903, provides that where husband or wife refuses to release his or her interest in land which the owner has contracted to sell, an application to the Supreme Judicial Court may be made and the court will complete the sale, but not until there is paid into court the amount covering the person's share who refused to release.

Husbands and wives, though they may be entitled under our statutes to certain interests in the estate of each other, those rights which the statutes give them respectively, they do not take as heirs.

Morse v. Ballou, 112 Maine 124.

During wedlock, before a husband's death, his wife has a right and interest in his real estate, contingent upon her surviving him. The interest is a valuable property interest.

Whiting v. Whiting, 114 Maine 382.

In Maine, since the Statute on Title by Descent was passed, the proper proceedings for the widow's one-third is a Petition for Partition.

Longley v. Longley, 92 Maine 395.

1. Barring Dower.

By Revised Statutes of Maine, 1903, Chapter 63, Section 6, dower will be barred by a mutual agreement, signed by both parties before marriage and with two witnesses.

See Revised Statutes of Maine, 1903, Chapter 77, Sections 10, 11, and 12.

No misconduct on the part of the wife will bar her dower. There must be a divorce.

French v. Lord, 69 Maine 541.

A widow in 1891, unless she had barred her right, was dowerable in land, not taken by right of eminent domain, but purchased by a railroad company, during the coverture, from her husband, in a case where the land lay outside of the location of the Railroad's right of way, and was bought for and used as a gravel pit.

McAllister v. Railroad Co., 106 Maine 371.

Chapter 77, Section 9, of Revised Statutes of Maine, 1903, allows either husband or wife to bar their title by descent by joining in a deed.

From 1850 until 1895, a married woman could sell her land without the joinder of her husband and would bar his curtesy.

Dower was not assignable at common law.

Johnson v. Shields, 32 Maine 424.

Field v. Lang, 87 Maine 441.

Fletcher v. Tuttle, 97 Maine 496.

By Revised Statutes of Maine, 1903, Chapter 62, Section 10, a person against whom a decree for divorce is granted is barred of his title by descent in the other's property.

No length of adverse possession during husband's life will bar the widow's dower. This is also true of the title by descent.

Durham v. Angier, 20 Maine 242.

B. Release of Dower.

Revised Statutes of Maine, 1903, Chapter 75, Section 17, provides that a deed of release or quitclaim of the usual form conveys the estate which the grantor has and can convey by a deed of any other form, but it takes a joint deed of husband and wife to convey her estate in which he has an interest.

By Revised Statutes of Maine, Chapter 73, Section 11, the wife of an incapacitated ward may join in a deed with

guardian or may release her interest by descent.

Under Revised Statutes of Maine, 1903, Chapter 61, Section 1, it is a sufficient joinder of a husband in his wife's deed of real estate directly conveyed to her by him, if he gives his written assent thereto by joining in the "testimonium clause" under his hand and seal "in testimony of his relinquishment of his right of dower" and acknowledges the instrument to be his free act and deed.

Roberts v. McIntire, 84 Maine 362 and 541.

X. Other Rights and Liabilities.

A. A Married Woman May Be Executrix, Etc.

Revised Statutes of Maine, 1903, Chapter 66, Section 25, reads:- "When an unmarried woman, who is joint or sole executrix or administratrix, marries, her husband shall not exercise such trust in her right nor is her authority thereby extinguished.

Bourne v. Todd, 63 Maine 432.

B. Witness in Suits to Which Husband is a Party.

Revised Statutes of Maine, Chapter 84, Section 107, provides that the husband and wife may be witnesses for or against each other.

Exceptions: When either is an executor or administrator, or is made a party as heir of a deceased party.

Husband and wife may be witnesses in both criminal and

civil suits.

Revised Statutes of Maine, 1903, Chapter 135, Section 19.

State v. Landry, 85 Maine 96.

C. Right of the Husband to Chastise the Wife.

The husband has no right to chastise the wife in any way. All the old rules have been abolished.

D. Taxes.

The wife is liable for taxes on her separate property and if not paid it is subject to execution and sale.

E. Right to Hold Public Office.

In Maine, a woman has been given the right to hold public office, namely, the office of Justice of the Peace, Notary Public, and those of a ministerial capacity, as well as offices connected with schools and school affairs.

F. Right to Her Wages.

Revised Statutes of Maine, 1903, Chapter 63, Section 3, allows a married woman her wages for her personal labor, not performed for her own family, and to maintain an action therefor in her own name, and hold them in her own right against her husband or any other person.

Revised Statutes of Maine, 1903, Chapter 88, Section 55, Clause VI: Wages of married women are not in any case sub-

ject to trustee process on account of any debt of her husband.

XI. Still Existing Disabilities.

1. Right of Suffrage.
2. Political Status.
3. Right to Take Homestead Government Land.
4. Legal Right to Children.

At this time, the right of suffrage has been passed by the Maine legislators in both houses and it now rests with the voters to make it a law.

XII. Summary.

I will try to sum up in a nut shell the rights and liabilities of a married woman in Maine.

In Maine, a married woman holds as her separate property whatever she possessed before marriage, and whatever comes to her after marriage, unless purchased by her husband's money or coming from him, so as to defraud his creditors, and as to it, she has all the usual rights of a single woman; but she cannot convey property received through the husband or his relatives unless he join. Her property alone is liable for her debts incurred before marriage. Real estate may be conveyed to the wife by her husband as security for a bona fide debt, and this may be conveyed by her without the husband being joined in the deed.

Letters of administration may be granted on her estate

and all debts contracted for her benefit shall be paid by her executor and allowed by him.

She may engage in trade on her own account, and any contract made by her is valid, and her property is liable to execution for her debts; his property is exempt in any such case unless he is a party to the contract. Her husband is not liable for her torts. If he abandon her and leave the State without providing for her maintenance, or be confined in the state prison, she may be authorized by the court to make contracts binding on him as well as herself. Dower and curtesy are abolished. The survivor is entitled to one-third of the real estate in fee, except wild lands; if there are children, to one-third; if none, to one-half; and the same as to lands owned during her coverture, unless the right has been released.

Personal property, aside from allowances to the widow, passes to the survivor in the same proportions. A woman over eighteen may marry without the consent of her parents or guardians.

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