

Legal Status of Women in Iowa eBook

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CHAPTER I.

SYNOPSIS OF COMMON LAW.

[Sidenote: Common law in force.]

Until a comparatively recent period the laws of England in force at the time of the independence of the American colonies, relating to married women, the mutual duties of husband and wife, their property rights and the care and custody of children, were everywhere in force in this country except in those states which were originally settled by other nations than the English.

[Sidenote: Changes.]

The agitation of the last fifty years, caused by the demand for equality in educational opportunities and in professional, business and trade relations, as well as for the legal and political recognition of women, has brought about great changes in these laws, until they are in many instances almost entirely superseded by statutory enactments more in accordance with the spirit of justice and in greater harmony with the requirements of a higher form of civilization. In many states they have reached a condition in which the legal status of husband and wife is nearly, if not wholly, one of equality.

[Sidenote: Basis of statute law.]

It must always be borne in mind, however, that the common law is the foundation upon which almost the entire structure of our American system of jurisprudence is based, although it is claimed that it has only been recognized by our courts so far as it has been "applicable to the habits and conditions of our society and in harmony with the genius, spirit and objects of our institutions." As it became apparent from time to time that it was not thus applicable, or where it failed to meet the requirements of the changed conditions of society the strictness of its rules was relaxed by giving to them a broader construction, or, when this could not be done, they were modified or entirely changed by statute.

[Sidenote: Marriage]

Marriage was regarded by the common law as a civil contract and might be entered into legally by a boy of fourteen or a girl of twelve years of age, provided they were under no legal disability to contract marriage. This was called the age of consent, or discretion, and a marriage contracted prior to this time was inchoate only, and might be repudiated by either party upon arriving at the legal age. If one of the parties was above and the other under the required age, the marriage might still be disaffirmed by either. If after

reaching the age of consent the parties continued to live together as husband and wife, this would be regarded as an affirmance of the marriage.

[Sidenote: What constitutes.]

The mutual consent of the parties themselves, followed by cohabitation, was sufficient to constitute a legal marriage, without the observance of any formalities. The formal ceremonies provided by statute for the celebration of marriages, and the penalties imposed upon clergymen and others who married those who had not complied with these formalities, were solely for the purpose of providing a convenient and certain proof of marriage, should it be afterwards necessary to establish that fact by evidence, rather than to invalidate marriages which would otherwise be legal.

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[Sidenote: Dissolution of marriage.]

Having established the marriage relation, it could only be dissolved by death or divorce granted by act of parliament, or, in this country after the declaration of independence, by act of legislature. No absolute divorce could be granted for any cause arising after the marriage, but a separation might be decreed in case of adultery by either party.

[Sidenote: Subjection of married women.]

By the rules of the common law, the person and property of women were under the absolute control of their husbands. The maxim, *Uxor non est juris, sed sub potestate viri*, "a wife is not her own mistress, but is under the power of her husband," is but an expression of the actual legal status of a woman from the instant she entered the matrimonial state, until released therefrom by death or divorce.

[Sidenote: Legally dead.]

Marriage was the act by which she ceased to have a legal existence, by which, we are told, her very being became incorporated or consolidated into that of her husband. From the time her identity became thus merged, she was presumed by the law to be under the protection and influence of her husband, to be so absolutely and entirely one person with him, that she had henceforth no life in law apart from his.

[Sidenote: Unity of person.]

The legal fiction of the unity of the persons of husband and wife dates back to feudal times, and may, perhaps, have been a necessity of the age and of the peculiar social and political systems of that period. Like many another law having its inception in a sincere desire to secure the greatest good to the greatest number, and apparently necessary for that purpose at the period of social development which gave it birth, it existed for centuries after it had ceased to result in any benefit or afford any protection, and after the reason for its being had passed away and been forgotten.

[Sidenote: Power of husband.]

We are told that at marriage the husband "adopted his wife and her circumstances together." He might exercise his power over her person by restraining her of her liberty in case of gross misbehavior, or by giving her moderate chastisement in the same degree that he might administer correction to his children. An early decision of one of our state courts interpreted this to mean that a man might whip his wife with a switch as large as his finger, but not larger than his thumb, without being guilty of an assault.

[Sidenote: Disabilities.]

Husband and wife being one person could not contract nor enter into a business partnership with each other; neither could one convey property to the other without the intervention of a third party. The wife was incapable of receiving a legacy unless it was willed to another person as trustee, for her use and benefit, and if a legacy were paid directly to her, the husband could compel the executor to pay it again to him.

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[Sidenote: Wife's power to contract.]

The wife had no power to contract a legal debt nor to bind herself by any kind of an agreement, neither could she make her husband liable for any debt or contract, except for necessities. These, the husband was under obligation to provide, and in contracting for them, the law assumed that the wife was acting as his agent.

[Sidenote: Release of dower.]

She might release her right of dower in lands of her husband, but only when examined separately she acknowledged that the conveyance or release was not secured by his influence or coercion.

[Sidenote: Wife's earnings.]

Her earnings though acquired by her individual labor and in a business separate and apart from her husband belonged to him, and he could collect them by action. This was the law though husband and wife were living apart. They could be subjected to the payment of his debts, by his creditors, and if he died without a will they descended to his heirs as other personal property. They were not considered the property of the wife, even in equity, without a clear, express, irrevocable gift, or some distinct affirmative act of the husband, divesting himself of them and setting them apart for her separate use.

[Sidenote: Power of conveyance and devise.]

A wife had no power to convey her real property, nor could she devise her personal property by will, without the consent of her husband.

[Sidenote: Domicile.]

The husband had the legal right to establish his home or domicile in any part of the world where "his interests, his tastes, his convenience, or possibly, his caprice might suggest," and it was the wife's duty to follow him. If she refused to accompany him, no matter upon what ground she based her refusal, she was guilty of desertion. A promise by the husband before marriage as to the establishment of the place of residence of the family, created a moral obligation only and was a mere nullity in law. Whenever there was a difference of opinion between husband and wife in regard to the location of the common home, the will of the wife had to yield to that of the husband. This law of domicile was based upon the grounds of the "identity of the husband and wife, the subjection of the wife to the husband, and the duty of the wife to make her home with her husband."

[Sidenote: Witness.]

Neither husband nor wife was competent as a witness to testify either for or against the other in civil or criminal cases.

[Sidenote: Husband entitled to society of wife.]

The husband was entitled to the society and services of his wife and he might bring an action for damages against anyone who harbored her, or persuaded or enticed her to leave him or live separate from him. If injuries were wrongfully inflicted upon her, two actions might be brought against the party responsible for the wrong, one by husband and wife for the personal injury to the wife, and one by the husband for loss of the wife's services. In either case, the amount recovered belonged to the husband.

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[Sidenote: Suits at law.]

The wife could neither sue or be sued unless her husband was joined with her in the suit. A judgment recovered against her alone was void, because she was unknown to the law apart from her husband. One entered in her favor became the property of her husband.

[Sidenote: Wife as executor.]

The consent of the husband was necessary to enable a married woman to act as executor, administrator, guardian or trustee.

[Sidenote: Duty of husband.]

[Sidenote: Liable for anti-nuptial contracts.]

[Sidenote: Torts of wife.]

The husband became responsible for the maintenance of the wife according to her rank and station, and if he failed to make suitable provision for her, tradesmen might furnish her with necessaries at her request and could collect payment from the husband. He was liable for all of her debts contracted before marriage, and this was the case, though he may have received no property with her. He was responsible for certain wrongs committed by her after marriage, such as libel and slander, and judgment could be recovered against him. If a wrong were committed jointly by both, action might be brought against the husband alone. When a judgment was recovered upon contract, or because of the wrongful act of the wife, if the husband failed to pay it, he might be imprisoned.

[Sidenote: Widow's quarantine.]

After the death of the husband the law gave the widow a right to remain forty days in his house, during which time her dower might be assigned. This right was known as the "widow's quarantine."

[Sidenote: Custody of children.]

The father was legally entitled to the custody of his children,—the right of the mother was never recognized, it being expressly stated by Blackstone that "a mother, as such, is entitled to no power, but only to reverence and respect." He might by will appoint a guardian for them after his death, though yet unborn, and might apprentice them or give them into the custody of others without the consent of the mother.

[Sidenote: Property rights.]

[Sidenote: Wife's paraphernalia]

All personal property belonging to the wife vested absolutely in the husband at marriage. He could will it to whom he pleased or, if he died without a will, it descended to his heirs. Even her wearing apparel and ornaments known by the term "paraphernalia," belonged to the husband. During his life he had the power to sell or give them away, but he could not devise them by will. If they remained in the possession of the wife while the husband lived, she was entitled to them over and above her dower, but even then creditors of the husband might claim them, if there chanced to be a deficiency of other assets with which to pay the debts of the estate.

[Sidenote: Choses in action.]

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The wife's choses in action, or evidences of money or property due to her, such as notes, bonds, contracts or the like, belonged to the husband if he reduced them to possession during her life, and they could be taken for his debts. He might bequeath them by will, but if he died without a will they descended to his heirs. If he failed to reduce them to possession while the wife lived, after his death they would revert to her heirs. If she outlived her husband they belonged to her. After the husband's death the wife took one-third of his personal estate if there were children, and one-half if there were no children.

[Sidenote: Real property of wife.]

[Sidenote: Curtesy.]

[Sidenote: Dower.]

The husband was entitled to the control, use and enjoyment, together with the rents and profits of his wife's real estate during the marriage, and if a living child were born, he had, after the wife's death, a life estate in such property and might retain possession of it while he lived. This was known as the husband's title by curtesy. The wife took a dower, or life estate in one-third of the husband's lands after his death, whether there were children or not. This estate of dower was forfeited should the husband be found guilty of treason, but his interest in her lands was not disturbed by the treason of the wife. His life interest in her real estate attached to trust estates, but she could claim no interest in trust estates of her husband. If the wife owned leases of land they could be sold or assigned by the husband during marriage. If he survived his wife they belonged to him, if she survived him, they belonged to her, provided he had not disposed of them while living.

[Sidenote: Descent of property.]

Personal property descended to males and females in equal shares, but the oldest son was entitled to the whole of his father's real property.

[Sidenote: Unity of person in criminal law.]

The unity of husband and wife was not so strongly affirmed by the common law when it dealt with their relation to criminal matters. When a wife committed an offense against the state she possessed a separate and distinct life and personalty, for the purposes of punishment. It is true that she was still inferior and this distinction was recognized and emphasized by the difference in the penalties imposed for the commission of the same crimes, these penalties being in inverse ratio to the importance of the criminal.

[Sidenote: Theft, burglary, *etc.*]

[Sidenote: Presumption of innocence.]

If a wife committed theft, burglary or other offenses in the company or presence of her husband, the law presumed that she acted under compulsion and held her not guilty, but this presumption did not extend to cases of murder or treason, and it might always be overcome by proof that she acted independently. The exception in cases of murder or treason, we are informed, was not alone because of the magnitude of the crimes, but rather on account of "the husband having broken through the most sacred tie of social community by rebellion against the state, had no right to that obedience from a wife which he himself, as a subject, had forgotten to pay."

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[Sidenote: Murder of wife.]

[Sidenote: Murder of husband.]

If a man murdered his wife it was as if he had murdered a stranger, and he might avail himself of the benefit of clergy, and secure immunity from punishment, provided he could read, but women were denied all benefit of clergy because of their sex, and because they “were not called upon to read.” If a wife killed her husband it was a much more serious offense, he being her lord, and she was guilty of treason and subject to the same punishment as if she had killed the king.

[Sidenote: Petit treason.]

In cases of petit treason the penalty depended upon the sex of the criminal, men being sentenced to be drawn and hanged, while women were drawn and burnt alive.

[Sidenote: Larceny, bigamy, etc.]

In larceny, bigamy, manslaughter and other crimes, men might claim the benefit of clergy and by taking holy orders, escape all punishment, except branding in the hand and a few months imprisonment, while women might receive sentence of death and be executed for the first offense. Later the law was changed so that in cases of simple larceny under the value of ten shillings, they might be burned in the hand and whipped, stocked or imprisoned for any time not exceeding one year. The disability of sex and of ignorance were both finally removed and all men and women admitted to benefit of clergy.

[Sidenote: Adultery and seduction.]

[Sidenote: Rape.]

By the common law, adultery and seduction were not classed with crimes, but were only civil injuries for which compensation might be recovered by husband, father or guardian, but the woman, who might be wronged, had no right of action for the injury to herself, and the State did not recognize any wrong to society by an injury to the person of one who was civilly dead. The crime of rape was punishable by death, and consent, though proved, was no defense, if the offense was committed upon a child under ten years of age.

[Sidenote: Right of appeal.]

Magna Charta, granted by King John, while redressing many hardships and grievances incident to feudal times, and confirming and securing to the people many rights and liberties, among which was the right of the wife to dower in her husband's property, denied to women the right of appeal except in case of the death of their husbands. The

right of appeal was the privilege of private prosecution for crime. (Analogous to our present method of commencing prosecutions by information.)

According to Blackstone, even the disabilities of the wife were for the most part intended for her protection and benefit, and he adds: "So great a favorite is the female sex of the laws of England!"

[Sidenote: Reason for discrimination.]

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The discrimination made by the common law between men and women, was based alone upon the assumption that women were, and must be always dependent by reason of their sex. In the light of a broader humanity, the distinctions seem cruel and barbarous, but that they were the result of any spirit of injustice or intentional tyranny, or of any desire on the part of men to oppress women or impose upon them any hardship or burden because of their physical weakness, is not at all probable. They were merely the outgrowth of the conditions incident to ruder stages of social development, and were, perhaps, as favorable to women at that period, as the laws of our own times will be considered when judged in the light of the civilization of the future, after successive centuries of intellectual and moral growth have been added to the enlightenment of to-day.

Law of Iowa.

CHAPTER II.

MARRIAGE.

[Sidenote: Contract.]

Marriage is a civil contract requiring the consent of parties capable of entering into other contracts, except as herein otherwise declared. [Sec.3376.] While marriage is defined to be a contract, it is rather a status or relation assumed by the act of marriage. Society is recognized as a third party to the agreement and as having a well defined interest in the duties and obligations of such relation. It is because of this interest, that the law defines the qualifications of the parties, the terms, rights and obligations of the contract, and also for what causes and in what manner it may be terminated. "It stands alone and can be assimilated to no other contract."

[Sidenote: Between what ages valid.]

A marriage between a male person of sixteen and a female of fourteen years of age is valid, but if either party has not attained the age thus fixed, the marriage is a nullity or not at the option of such party made known at any time before he or she is six months older than the age thus fixed. [Sec.3377.] The common law rule fixing the age of consent to marriage at fourteen for males and twelve for females is not repealed in Iowa. The time in which the parties may disaffirm the marriage is merely extended by the statute.

[Sidenote: License.]

Previous to any marriage within this state, a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage is to be solemnized. [Sec.3378.] As under the common law, no express form or ceremony is

necessary to constitute a valid marriage, any mutual agreement between the parties to assume the relation of husband and wife, followed by cohabitation, being sufficient, provided there is no legal disability on the part of either existing at the time. It is immaterial how the intention to marry is expressed. It has been held in this state that a marriage was legal, where the woman intended present marriage, though the man did not, where they had assumed the relation of husband and wife, and his conduct had been such as to justify her in believing that he had intended present marriage. Marriages by consent only, are not rendered void by a provision punishing parties for solemnizing marriages in any other manner than that prescribed by law.

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[Sidenote: Under age.]

[Sidenote: Consent of parent.]

Such license must not in any case be granted where either party is under the age necessary to render the marriage absolutely valid, nor shall it be granted where either party is a minor, without the previous consent of the parent or guardian of such minor, nor where the condition of either party is such as to disqualify him from making any other civil contract. [Sec.3379.]

[Sidenote: Proof of age.]

Unless such clerk is acquainted with the age and condition of the parties for the marriage of whom the license is applied for, he must take the testimony of competent and disinterested witnesses on the subject. [Sec.3380.]

[Sidenote: Record.]

He must cause due entry of the application for the issuing of the license to be made in a book to be procured and kept for that purpose, stating that he was acquainted with the parties and knew them to be of competent age and condition, or that the requisite proof of such fact was made known to him by one or more witnesses, stating their names, which book shall constitute a part of the records of his office. [Sec.3381.]

[Sidenote: Proof of consent of parent.]

If either party is a minor, the consent of the parent or guardian must be filed in the clerk's office after being acknowledged by the said parent or guardian, or proved to be genuine, and a memorandum of such facts must also be entered in said book. [Sec.3382.]

[Sidenote: Penalty.]

If the clerk of the district court grants a license contrary to the provisions of the preceding sections, he is guilty of a misdemeanor, and if a marriage is solemnized without such license being procured, the parties so married and all persons aiding in such marriage are likewise guilty of a misdemeanor. [Sec.3883.]

The punishment provided for misdemeanors is imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both fine and imprisonment.

[Sidenote: Who may solemnize.]

Marriages must be solemnized either:

1. By a justice of the peace or mayor of the city or incorporated town wherein the marriage takes place;
2. By some judge of the supreme or district court of this state;
3. By some officiating minister of the gospel ordained or licensed according to the usages of his denomination. [Sec.3384.]

[Sidenote: Certificate]

After the marriage has been solemnized the officiating minister or magistrate shall, on request, give each of the parties a certificate thereof. [Sec.3385.]

[Sidenote: Penalty.]

Marriages solemnized with the consent of parties in any other manner than is herein prescribed, are valid, but the parties themselves, and all other parties aiding or abetting, shall forfeit to the school fund the sum of fifty dollars each. [Sec.3386.]

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[Sidenote: Return.]

The person solemnizing marriage shall forfeit a like amount, unless within ninety days after the ceremony he shall make return thereof to the clerk of the district court. [Sec.3387.]

[Sidenote: Register of marriages.]

The clerk of the district court shall keep a register containing the names of the parties, the date of the marriage, and the name of the person by whom the marriage was solemnized, which, or a certified transcript therefrom, is receivable in all courts and places as evidence of the marriage and the date thereof. [Sec.3388] The register of marriages kept by the clerk is always sufficient to establish marriage, in the absence of evidence to the contrary, but record evidence is not indispensable. The fact of marriage may be shown in various ways. It may be proved by the admissions or uncontradicted testimony of either party, or a legal presumption may be raised by the testimony of either husband or wife with proof of continued cohabitation. The evidence of witnesses who were present and witnessed the marriage is always sufficient.

[Sidenote: Peculiar mode.]

These provisions so far as they relate to procuring licenses and to the solemnizing of marriages, are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation [Sec.3389].

[Sidenote: Husband responsible for return.]

But when any mode is thus pursued which dispenses with the services of a clergyman or magistrate, the husband is responsible for the return directed to be made to the clerk and is liable to the above named penalty if the return is not made [Sec.3390].

[Sidenote: When void.]

Marriages between persons whose marriage is prohibited by law, or who have a husband or wife living, are void; but if the parties live and cohabit together after the death of the former husband or wife, such marriage shall be deemed valid [Sec.3392]. A judicial decree is not necessary to annul a marriage between parties one of whom has a wife or husband living at the time, as such marriages are absolutely void, nor does such marriage confer any right upon either in the property of the other. A marriage procured by fraud or force is void, because it lacks the essential element of consent. Such marriages may be annulled by a court of equity, but false representations as to character, social position or fortune do not constitute such fraud on the opposite party as to avoid a marriage induced thereby.

CHAPTER III.

HUSBAND AND WIFE

[Sidenote: Property rights of married women.]

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A married woman may own in her own right, real and personal property acquired by descent, gift or purchase, and manage, sell, convey, and devise the same by will, to the same extent and in the same manner that the husband can property belonging to him. [Sec.3393.] The husband is the legal head of the family and household furniture, pictures and all similar property used in the house occupied by husband and wife, is considered as being in the possession of the husband and under his control. Such property may be sold or mortgaged by the husband without the consent of the wife. Property conveyed to both jointly is held by them as tenants-in-common. Each owns an undivided one-half interest in such property, and this interest may be sold on execution to satisfy claims against husband or wife as the case may be. Property purchased with funds belonging to both husband and wife is owned by them jointly, the interest of each being in proportion to the amount of the purchase price contributed by each.

[Sidenote: Real property, Conveyance, or contract.]

A married woman may convey or encumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent, and in the same manner as other persons [Sec.3106].

[Sidenote: Conveyance by husband and wife.]

Every conveyance made by a husband and wife shall be deemed sufficient to pass any and all right of either to the property conveyed, unless the contrary appears on the face of the conveyance [Sec.3107]. While Iowa was still a territory, in 1840, power was conferred upon a married woman to release her dower and to convey her real estate by any conveyance executed by herself and husband and acknowledged by a separate examination and acknowledgment. This law was re-enacted in 1846, and was the first law passed in the State of Iowa for the better protection of married women. This remained the law until 1851, when an act was passed by which she might convey her interest in real estate "the same as any other person."

[Sidenote: Interest of either in other's property.]

When property is owned by either the husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in this chapter. [Sec.3394.] The distributive share or dower interest of each in the property of the other, is inchoate and becomes complete only upon the death of the owner of the property; consequently any agreement between the husband and wife relinquishing their respective interests in each other's property, though such agreement should be made in contemplation of separation is invalid. Upon a dissolution of the marriage relation by divorce, the husband and wife may contract with each other with reference to a division of the

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property, provided the contract is reasonable, just and right. A husband may pay taxes and interest on an incumbrance on a homestead owned by his wife, but occupied by both, and may make repairs upon the same. He may make improvements on land owned by the wife and may expend time and labor in caring for any of her property, without rendering such property liable for his debts, provided there is no collusion between them and no evidence of fraud on the part of either.

A wife's property cannot be taken for her husbands debts, although it may be in possession of the husband and the creditors have no notice of the wife's ownership.

[Sidenote: Remedy by one against the other.]

Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried. [Sec.3395.] If property or money belonging to the wife, but in possession of the husband is used by him, with her knowledge and consent, in the payment of debts incurred for family expenses, or for other purposes connected with the support of the family, she cannot recover for the same, in the absence of an express agreement on his part to repay her. If a wife advances money or property to her husband to be used as he may choose, the presumption is that she does so in view of the mutual benefits which may accrue from the advancement and she cannot recover the same unless there is an agreement for its repayment.

[Sidenote: Husband not liable for wife's torts.]

For all civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor except in cases where he would be jointly responsible with her if the marriage did not exist [Sec.3396.] This statute abrogates the rule of the common law, making a husband responsible for civil injuries committed by his wife. The common law presumption that criminal acts done in the presence of the husband were by compulsion, is still recognized in this State but may be overcome by proof to the contrary.

[Sidenote: Conveyances to each other valid.]

[Sidenote: Conveyances to third parties.]

A conveyance, transfer or lien executed by either husband or wife, to or in favor of the other shall be valid to the same extent as between other persons [Sec.3397.] When the rights of creditors might be prejudiced by transfers of property between husband and wife, such transactions will be closely scrutinized, and the utmost good faith must plainly

appear, but where no fraudulent intention is shown they will be upheld if based upon an adequate consideration. If a conveyance is made by the husband to the wife when the husband is largely indebted and insolvent, such conveyance is presumptively fraudulent, but a conveyance

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to a wife in payment of a valid claim, even though made at a time when the husband is largely indebted to others, will not be considered fraudulent the wife having the same right as other creditors to obtain payment. All contracts between husband and wife where no other consideration appears than an agreement to perform some duty already incumbent upon the parties, because of their relations as husband and wife, are against public policy, and will not be enforced in law. Such, for example, as a promise by the husband to pay money to the wife to induce her to live with him, when she has no legal ground for not living with him; or an agreement to allow the husband to obtain a divorce when he has no legal cause for divorce, or a conveyance of property in consideration of future care and support because the husband is growing old; or a contract between husband and wife by which the husband agrees to pay the wife at stated intervals, sums of money, in consideration of the faithful performance by the wife of the obligations incident to the marriage relation. But our courts have held that exempt property may be transferred by the husband to the wife without any consideration; that a deed from husband to wife in consideration of a dismissal by the latter, of a proceeding for divorce, is valid; that a contract between husband and wife by which the wife, for a consideration, after a decree of divorce, agrees to release all her dower interest in the real estate of the husband, is binding. Voluntary conveyances, in favor of third parties, by a man or woman in contemplation of marriage, and with the evident intention of defeating the marital rights of the other party, in such property, will be held fraudulent, and may be set aside in an action by the injured party after marriage. Contracts and conveyances made before marriage and duly recorded, will not be set aside on account of the marriage relation, as the fact of recording is sufficient to charge the wife with notice of the transactions. Ante-nuptial contracts, if free from fraud and imposition, are valid, and such a contract stipulating that each is to have the untrammelled and sole control of his or her own property, real and personal, as though no marriage had taken place, will be enforced. The dower right of each in the other's property is completely waived by such contract.

[Sidenote: Abandonment of either.]

In case the husband or wife abandons the other and leaves the state, and is absent therefrom for one year without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for the period of one year or upward, the district court of the county where the husband or wife, so abandoned or not confined, resides, may, on application by petition setting forth fully the facts, authorize him or her, to manage, control, sell and encumber the property of the husband or wife for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings

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shall be given as in ordinary actions, and anything done under or by virtue of the order of the court, shall be valid to the same extent as if the same was done by the party owning the property. [Sec.3398.] A wife who is abandoned by her husband without her fault, may pledge his credit for necessities, and if left in the management of his business may make all contracts incident to such management. She may also sell exempt property and apply the proceeds towards the support of the family before absolutely forced to do so by the destitution of the family.

[Sidenote: Contracts and sales binding.]

All contracts, sales or incumbrances made by either husband or wife by virtue of the power contemplated in the preceding section, shall be binding on both, and during such absence or confinement, the person acting under such power, may sue and be sued thereon, and for all acts done, the property of both shall be liable. No suit or proceeding shall abate or be in anywise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other. [Sec.3399.]

[Sidenote: Decree set aside.]

The husband or wife affected by the proceedings contemplated in the preceding sections, may have the order or decree of the court set aside or annulled, but the setting aside of such decree or order shall in nowise affect any act done thereunder. [Sec.3400.]

[Sidenote: Attorney in fact.]

A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the same to the same extent and manner as other persons. [Sec.3401.] The fact of the marital relation does not, of itself, establish the presumption that the husband is the agent of the wife, for the transaction of business for her, but in order to bind her, he must be expressly authorized to act as agent, or she must, after knowledge of the act, expressly or impliedly ratify it. Such agency or ratification may be established by circumstances, and the degree of evidence required in such cases, is less than is necessary to establish an agency between independent parties, or the ratification by the husband, of acts done by the wife or his agent.

[Sidenote: Wages of wife.]

A wife may receive the wages of her personal labor and maintain an action therefor in her own name, and hold the same in her own right; she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property

as if unmarried. [Sec.3402.] The husband is entitled to the wife's labor and assistance in the duties and obligations growing out of the marriage relation, and to her earnings, if she is not engaged in a separate business on her own account; but her earnings for services performed for others than her husband or acquired in carrying on an independent business, belong to her alone. Such earnings may be invested in property and it will be exempt from seizure for debts of her husband.

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She may bring actions for injuries to herself, whether of person, property or reputation in the same manner as if she were unmarried. If she suffers personal injury by which the husband is deprived of her services or society he has a right of recovery for such loss and for expenses for medicine and medical treatment. The wife cannot recover in such case, unless it appears that she has expended her own money in payment of such expenses. If, at the time of the injury she is engaged in a separate business, and death results, the husband may still recover for loss of society and expenses, but an action for damages can be brought only by the administrator of her estate. Although husband or wife may maintain an action against the other for the recovery of property, neither has a right of action for damages sustained by the infliction of personal injury, and this is true even though the one inflicting the injury has been criminally convicted and fined for the assault.

[Sidenote: Property of one not liable for debts of the other.]

Neither husband or wife is liable for the debts or liabilities of the other incurred before marriage, and except as herein otherwise declared, they are not liable for the separate debts of each other; nor are the wages, earnings, or property of either, nor is the rent or income of such property liable for the separate debts of the other [Sec.3403.] The husband is liable for necessities furnished the wife, upon an implied obligation to provide for her a reasonable support. The term "necessaries," is not confined to the supply of things actually demanded for her sustenance, such as food, clothing and medicine, but includes all that may be needful for her comfort and happiness according to her rank and station in society. In determining the extent of the husband's liability, it is always proper to consider the wife's social position and the circumstances and condition of the family, and these will, of course, vary in each particular case. It has been held that jewelry is included in the term necessities and that attorney's fees in divorce proceedings by the wife, can be recovered from the husband. If the wife is compelled to leave her husband because of cruel and improper conduct on his part, the husband is still presumed to have extended to her a general credit for necessities, such as meat, drink, clothes, medicine, etc., suitable to his degree and circumstances.

[Sidenote: Contracts of wife.]

Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried [Sec.3404.] By this provision a wife is clothed with the same rights enjoyed by her husband, and must, therefore, assume the same liabilities. She has the same freedom to contract in reference to her property, or other matters, and will be held to the same strict accountability. The law will enforce her obligations with the same impartiality, whether such obligations are express or implied. She may contract with reference to all kinds of property, including real estate, and may mortgage her property as security for the debt of another, in precisely the same manner that her husband could do in similar cases.

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[Sidenote: Family expenses.]

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or of either of them, and in relation thereto they may be sued jointly or separately. [Sec.3405.] Both husband and wife are personally responsible for family expenses. The credit may be extended to the husband and the contract made with him alone, and the wife will be liable though she may have no knowledge of the purchase and has given no consent thereto. It is sufficient to show that the articles were used, or kept for use in the family, and a judgment may be rendered against the wife alone. But the husband cannot subject the property of his wife to any liability for articles for family use when it appears that such articles were not a necessity, if the wife has objected to the purchase and notified the seller that she will not pay for the same. "Expenses of the family," are not limited to necessary expenses, but whatever is kept or used in the family is included in the term. A piano, an organ, a watch and other jewelry, a cook stove and fixtures, have all been held to come within the term "family expense," for which the property of the wife is liable. But a reaping machine, though used by the husband in the business by which he supports his family, is not a legitimate item of family expense, nor can a plow be included therein. The expense of treatment of a wife at a hospital for the insane, has been held not to be a family expense. Money borrowed by the husband and used in the purchase of articles which, if obtained on credit, would constitute items of family expense, cannot itself form such an item of family expense, that the wife may be held liable, unless the money was furnished at her request, and the account assigned to the party furnishing the money. If a merchant with whom the husband has no account is notified in writing, not to sell goods to the wife and charge them to him, the merchant cannot hold the husband responsible, unless it appears that the latter fails to provide necessaries otherwise for his family. If the family is supported in whole, or in part, by the wife, she cannot recover back the money thus expended, from her husband or his estate, as the law places such duty equally on both.

[Sidenote: Removal from homestead.]

Neither husband nor wife can remove the other, nor their children from their homestead without his or her consent, and if he abandons her, she is entitled to the custody of their minor children, unless the district court, upon application for that purpose, shall, for good cause, otherwise direct [Sec.3406.]

[Sidenote: Conveyance of property.]

When either the husband or wife is insane, and incapable of executing a deed, and relinquishing or conveying his or her right to the real property of the other, the sane person may petition the district court of the county where such petitioner resides, or of the county where said real estate is situated, setting forth the facts and praying for an

order authorizing the applicant or some other person to execute a deed of conveyance and thereby relinquish the interest of either in the real property of the other [Sec.3407.]

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[Sidenote: Proceedings and decree.]

Upon such application the court has power to appoint some person or attorney guardian of the person alleged to be insane, who shall ascertain as to the propriety, good faith and necessity of the prayer of the petitioner, and who shall have power to resist said application. If the court is satisfied that the petition is made in good faith, and that the petitioner is the proper person to exercise the power and make the conveyance, and that such power is necessary and proper, said court shall enter up a decree authorizing the execution of all such conveyances, for and in the name of such husband or wife, by such person as the court may appoint [Sec.Sec.3408-3409.]

[Sidenote: Appointment, Revocation.]

All deeds executed by the person thus appointed shall be valid in law, and shall convey the interest of such insane person in the real estate so conveyed; said power shall cease and become void as soon as he or she shall become sane and of sound mind, and apply to the court to revoke said power, and the same shall be evoked; but such revocation shall in nowise affect conveyances previously made. [Sec.3410.]

CHAPTER IV.

DIVORCE, ANNULING MARRIAGES AND ALIMONY.

[Sidenote: Jurisdiction.]

The district court where either party resides, has, jurisdiction of the subject matter of this chapter. [Sec.3411]. State legislatures have power to grant divorces in all cases where such power has not been conferred on the courts of the state by some constitutional provision or legislative enactment. The legislature of this state has been deprived of the power to grant divorces for any cause by Article 3, Sec.27, of the constitution, which provides that “no divorce shall be granted by the general assembly.” A divorce obtained from a court not having jurisdiction is absolutely void. The residence necessary to give the court jurisdiction must be permanent, or at least of a sufficient period of time to indicate an intention of continued residence and citizenship. The general rule is that the domicile of the wife and children is to be considered the same as that of the husband, but in a proceeding for divorce the law recognizes that husband and wife have separate domiciles, and a valid divorce may be granted where only one of the parties resides, but if they reside in different states, the court having jurisdiction of the party making application for the divorce may grant the decree, but it has no authority to make a decree as to the custody of the children, if they are non-residents of the state where the decree of divorce is rendered. A decree of divorce can always be set aside for fraud in obtaining it.

[Sidenote: Petition.]

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When the application for divorce is against a party not residing in this state, the petition, in addition to the facts on account of which the applicant claims the relief sought, must state that such applicant has been for the last year a resident of the state, stating the town and county in which he has resided, and the length of his residence therein, after deducting all absences from the state; that he is now a resident thereof; that such residence has been in good faith and not for the purpose of obtaining a divorce only; and it must in all cases state that the application is made in good faith and for the purpose set forth in the petition. [Sec.3412.]

[Sidenote: Verification. Evidence. Hearing.]

All the allegations of the petition must be verified by oath and proved by competent evidence. No divorce shall be granted on the evidence of the applicant alone, and all such actions shall be heard in open court on the testimony of witnesses or depositions. [Sec.3413.] No divorce can be granted by consent of parties unless grounds therefor can be shown by competent evidence, and if collusion or connivance on the part of the defendant can be shown, such fact will be a valid defense.

[Sidenote: Causes.]

Divorce from the bonds of matrimony may be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage;
 2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years;
 3. When he is convicted of felony after the marriage;
 4. When, after marriage, he becomes addicted to habitual drunkenness;
 5. When he is guilty of such inhuman treatment as to endanger the life of his wife.
- [Sec.3414.]

A previous law of our state provided that when it was fully apparent to the court that the parties could not live in peace and happiness together, and that their welfare required a separation, a decree of divorce might be granted, but no valid divorce can now be granted for any other cause than for some one of those enumerated above; and this is true, although it may plainly appear that a party has wholly disregarded his marriage vows and obligations in various other ways.

[Adultery.]

As the direct fact of adultery can seldom be proved, when a divorce is asked on this ground, it will be sufficient if the fact can be shown by circumstances which would be inconsistent with any rational theory of innocence, and such as would lead the guarded discretion of a just mind to the conclusion of the truth of the facts. The disposition of the parties may be shown, with the fact of their being together and having an opportunity to commit the act.

[Sidenote: Desertion.]

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A reasonable cause for desertion must be some wrongful conduct on the part of the other party, and must be of such a serious nature that it would *prima facie* entitle the party deserting to a divorce. If husband and wife mutually agree to separate, such separation will not constitute ground for divorce, unless the party applying for the divorce, in good faith expresses a desire to live with the other. Where the wife is compelled to leave her husband on account of inhuman treatment, such as would entitle her to a divorce, such desertion cannot be made the basis of proceedings for divorce by the husband, for in such case he and not she is guilty of desertion, and this may be alleged by the wife, with other causes, in seeking a divorce. A wife may be justified in leaving her husband because of his failure to protect her from insult and abuse, and when she leaves him for this cause, her desertion will not be grounds for divorce.

[Sidenote: Felony.]

A conviction for felony which may be subject to reversal does not constitute ground for divorce, but such conviction must be final and absolute.

[Sidenote: Drunkenness.]

If a woman marries a man knowing him to be intemperate, though she does so in the hope of reforming him, the courts will not interfere after marriage to grant her relief from the result of her misplaced confidence, but where the habit has been acquired subsequent to the marriage and has become fixed and the husband is habitually drunk, though not in such condition during business hours, it is such habitual drunkenness as will entitle the wife to a divorce.

[Sidenote: Cruel treatment.]

Cruel and inhuman treatment, to constitute ground for divorce must be of such a nature as to endanger life, but need not necessarily consist of physical violence. Even where no single act or number of acts can be shown which might cause reasonable apprehension of harm to life, if the ill treatment as an entirety is of a nature to affect the mind and undermine health to such a degree that the life will be ultimately endangered, it will entitle the injured party to a divorce. Ungovernable outbursts of rage, the use of profane and obscene language, applying insulting epithets to the wife in the presence of others, acts of cruelty and neglect in sickness, coupled with failure to provide suitable food and clothing, have all been held to be such cruelty, which, if long continued, would result in danger to life. Condonation is always a valid defense in proceedings for divorce. If the wrong is once forgiven, it cannot afterwards be made a ground for divorce, but the mere fact that a wife continues to live in the same house with her husband, and does the household work, is not such condonation as will defeat her action.

[Sidenote: Husband from wife.]

The husband may obtain a divorce from his wife for like causes, and also when the wife at the time of the marriage was pregnant by another than her husband, unless such husband had an illegitimate child or children then living, which was unknown to the wife at the time of the marriage. [Sec.3415.] In many other states, divorce will be granted to the husband, for the cause here named, but in no other state is it provided that in such case, a husband who had an illegitimate child at the time of the marriage, unknown to the wife, cannot take advantage of this fact to obtain a divorce.

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[Sidenote: Cross petition.]

The defendant may obtain a divorce for the causes as above stated, by filing a cross petition. [Sec.3416.]

[Sidenote: Maintenance during litigation.]

The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action. [Sec.3417.] In applying for an order granting temporary alimony it is not necessary to show that the party making the application is entitled to a divorce. It is sufficient if it appears that such party is without means of support and unable to prosecute the action without such allowance. The fact of marriage must be either admitted or proved. The court may allow attorney's fees in proceedings for divorce and alimony, but the party against whom the action is brought, is not liable, if the other party is unsuccessful. Where the applicant for divorce is ordered to pay a certain sum of money to enable the defendant to defend, if he fails to obey this order, the action may be dismissed.

If it appears that the father is an unfit person to have the custody of the children, pending a proceeding for divorce, the court has power to provide for their custody and maintenance as may be for the best interest of the children.

[Sidenote: Attachment.]

A judgment or order for temporary alimony is a lien upon the property of the person against whom the order is directed, and such property may be levied upon by attachment and held to satisfy the decree of the court. [Sec.3418.] Attachment may be allowed without bond and it may be granted in a suit to annul an illegal marriage as well as in one for divorce. It may be levied on the homestead as well as other property. The disposition of property by the defendant may also be restrained by injunction.

[Sidenote: Showing.]

In making such orders, the court or judge shall take into consideration the age, condition, sex and pecuniary condition of the parties, and such other matters as are deemed pertinent, which may be shown by affidavits in addition to the pleadings or otherwise, as the court or judge may direct. [Sec.3419.]

[Sidenote: Alimony, Custody of children, Changes.]

When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right and proper. Subsequent changes may be made by the court, in these respects when circumstances render them expedient. [Sec.8420.] In granting a divorce, full power is given the court

over the questions of permanent alimony and custody of children, and the amount of alimony will be determined by a careful consideration of the circumstances of the parties. The allowance is usually for a certain sum of money, but the court may set apart a specific portion of property as alimony. Only in rare cases and under

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peculiar circumstances will alimony be granted to the party in fault. A judgment for alimony may be made a lien upon specific property, and the court may declare it a lien on the homestead. The court granting a divorce and alimony retains jurisdiction of the same, and upon a subsequent change in the circumstances of the parties, may modify or change the decree in relation to alimony and custody of children as may seem just and proper and for the best interests of all parties. A suit for alimony without divorce may be brought, where the wife has been compelled to leave her husband on account of misconduct on his part justifying the separation. The disposition of the children is entirely within the discretion of the court, and the custody may be given to either party or may be taken from both and given to a guardian, if it can be shown that neither parent is a proper person to care for them. The best good of the child will be the first and most important consideration in determining to whom the custody shall be given.

[Sidenote: Forfeiture.]

When a divorce is decreed the guilty party forfeits all rights acquired by the marriage. [Sec.3421.] After a decree of divorce neither party can have any interest in the property of the other except that which is granted by the decree, and this applies to claim for dower in case of survival.

[Sidenote: Annulling illegal marriages.]

Marriages may be annulled for the following causes:

1. Where marriage between the parties is prohibited by law.
2. Where either party was impotent at the time of the marriage.
3. Where either party has a husband or wife at the time of the marriage, provided they have not continued to live and cohabit together after the death of the former husband or wife.
4. Where either party was insane or idiotic at the time of the marriage. [Sec.3422.] If a person marries who has a husband or wife living such marriage is absolutely void. In case of absence of the husband a presumption of death does not arise until he has been absent seven years without intelligence concerning him. Where a party is insane or idiotic, and is therefore incapable of consenting, a marriage with such person will be void. When a marriage is absolutely void by law, it is not necessary to bring an action to annul it, before contracting a subsequent legal marriage.

[Sidenote: Petition.]

A petition shall be filed in such cases as in actions for divorce, and all the provisions of this chapter shall apply to such cases except as otherwise provided. [Sec.3423]

[Sidenote: Validity determined.]

When the validity of a marriage is doubted, either party may file a petition and the court shall decree it annulled or affirmed according to the proof. [Sec.3424]

[Sidenote: Children. Legitimacy.]

When a marriage is annulled on account of the consanguinity or affinity of the parties, or because of impotency, the issue shall be illegitimate, but when on account of non-age, or insanity, or idiocy, the issue is the legitimate issue of the party capable of contracting marriage. [Sec.3425]

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[Sidenote: Prior marriage.]

When a marriage is annulled on account of a prior marriage, and the parties contracted the second in good faith, believing the prior husband or wife to be dead, that fact shall be stated in the degree of nullity; and the issue of the second marriage, begotten before the decree of the court, is the legitimate issue of the parent capable of contracting. [Sec.3426.]

[Sidenote: Alimony.]

In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in cases of divorce. [Sec.3427.]

CHAPTER V.

MINORS AND GUARDIANSHIP.

[Sidenote: Majority.]

The period of minority extends in males to the age of twenty-one years, and in females to that of eighteen, but all minors attain their majority by marriage. [Sec.3428.] The disability of minority may also be terminated by death.

[Sidenote: Contracts.]

[Sidenote: Disaffirmance.]

A minor is bound not only by contracts for necessities, but also for his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of the contract and remaining within his control at any time after his attaining his majority. [Sec.3429.] The rule respecting the contract of an infant is, that when the court can pronounce it to be to the infant's prejudice, it is void, and when to his benefit, as for necessities, it is good, and when of uncertain nature, it is voidable, at the election of the infant. As to what will be "a reasonable time," within which a minor must disaffirm his contract, must depend upon the peculiar circumstances of each case. In case of the marriage of a minor the time for disaffirmance will commence from the date of the marriage. The intention of this law is to limit the time in which a minor may take advantage of his minority and disaffirm his contracts, but the disaffirmance may be either before or after majority, if within a reasonable time after becoming of age. The minor is under no obligation to restore money or property, unless it is the identical money or property received by virtue of the contract, and he may therefore disaffirm his

contract without rendering back the consideration, if such consideration is no longer under his control.

[Sidenote: Misrepresentations. Engaging in business.]

No contract can be thus disaffirmed in cases, where on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting. [Sec.3430.] If the fact of minority is known to the other party, the minor will not be bound by his contracts, although he may be engaged in business as an adult. The fact that he is engaged in business on his own account will alone be sufficient evidence to authorize others to conclude that he has attained his majority and will make all contracts to which he is a party, binding upon him.

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[Sidenote: Natural guardians.]

The parents are the natural guardians of their minor children and are equally entitled to the care and custody of them. [Sec.3432.] While a parent is the natural guardian of his child, this guardianship is not absolute, and may be lost by any misconduct on the part of the parent which would render it not best for the child to remain in his care and under his control. The duty of furnishing support to minor children rests equally upon both parents, but neither one is legally liable for the support of their adult children. An adult child living at home in the family of the parent, being supported as a member of the family, and performing services in the household, cannot recover payment for such services in the absence of an express contract on the part of the parent to pay for them. A stepfather stands in the position of a parent to the children of his wife by a former husband, *provided*, he receives them into his family. He is entitled to their services and is responsible for their education and maintenance. The parents can at any time consent to surrender the custody of their minor children and transfer this custody to another by agreement. Articles of adoption properly executed according to the requirements of the law upon that subject, are necessary to invest another with the rights and responsibilities of a parent.

[Sidenote: Surviving parent, Guardian appointed.]

Either parent dying before the other, the survivor becomes the guardian. If there be no parent or guardian qualified and competent to discharge the duty, the district court shall appoint a guardian. [Sec.3488.]

[Sidenote: Of property.]

If the minor has property not derived from either parent, a guardian must be appointed to manage such property, which may be either parent, if suitable and proper. [Sec.3434.]

[Sidenote: Minor may choose.]

If the minor be over the age of fourteen years and of sound intellect, he may select his own guardian, subject to the approval of the district court of the county where his parents, or either of them resides; or, if such minor is living separate and apart from his parents, the district court of the county where he resides has jurisdiction. [Sec.3435.]

[Sidenote: Powers.]

Guardians of the persons of minors have the same power and control over them that parents would have if living. [Sec.3440.]

[Sidenote: Duties.]

Guardians of the property of minors must prosecute and defend for their wards. They must also in other respects manage their interests under the direction of the court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the ward. [Sec.3441.] All power of the guardian over the estate of his ward is derived from the appointment of the court, but an appointment as guardian will

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not authorize a sale of property, nor an investment or disposal of money belonging to the ward, without a special order of the court. All expenses for the education and maintenance of the ward must be kept within the income of his estate. If this should not be sufficient the principal may be resorted to, but not without an order of the court. All transactions between guardian and ward, where the former has secured an apparent advantage, by way of gift, or contract or settlement, will be presumed to have been the result of undue influence, and will be set aside by a court of equity, unless it can be shown that they were made in good faith and for a fair and valuable consideration.

[Sidenote: Property in state.]

The foreign guardian of any non-resident minor, may be appointed the guardian in this state of such minor, by the district court of the county wherein he has any property, for the purpose of selling or otherwise controlling that and all other property of such minor within the state, unless a guardian has previously been appointed under the preceding section. The foreign guardian of any non-resident idiot, lunatic or person of unsound mind may be appointed the guardian of such ward by the district court in like manner and with like effect in all cases where the foreign guardian of a non-resident minor could be appointed the guardian of such minor in this state. Such guardian shall have the same powers and be subject to the same liabilities as guardians of resident minors. [Sec.3457.]

[Sidenote: Guardians of drunkards, spendthrifts and lunatics.]

When a petition is presented to the district court, verified by affidavit, that any inhabitant of the county is:

1. An idiot, lunatic, or person of unsound mind;
2. An habitual drunkard incapable of managing his affairs;
3. A spendthrift who is squandering his property, and the allegations of the petition have been satisfactorily proved upon the trial, such court may appoint a guardian of the property of any such person, who shall be the guardian of the minor children of his ward, unless the court otherwise orders. Such court may also appoint the guardian of the property of an habitual drunkard as the guardian of his person. If the person adjudged to be an habitual drunkard has no property, the court may appoint a guardian of his person. [Sec.3463 Sup.]

[Sidenote: Order for restraint of drunkard.]

The district court or any judge thereof, may, from time to time, enter such orders as may be necessary, authorizing the guardian of the person of such habitual drunkard to

confine and restrain him in such manner and in such place within the state as may, by the court or judge, be considered best for the purpose of preventing such drunkard from using intoxicating liquors, and as may tend to his reformation. [Sec.3468a Sup.] When it is sought to have a guardian appointed for a person of unsound mind, the test of his mental

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capacity is not the degree of prudence and foresight he manifests in the management of his affairs, for “the law does not assume to measure the different degrees of power of the human intellect, or to distinguish between them where the power of thought and reason exists,” but the question to be determined is whether or not he possesses sufficient ability to understand in a reasonable manner the nature and effect of his acts, or the business he is transacting. “Although the mind of an individual may be to some extent impaired by age or disease, still, if he is capable of transacting his ordinary business, if he understands the nature of the business in which he is engaged and the effect of what he is doing and can exercise his will with reference thereto, his acts will be valid,” and he will not be adjudged to be of unsound mind and incapable of managing his business affairs.

[Sidenote: Real estate sold. Allowance to family.]

Whenever the sale of the real estate of such ward is necessary for his support or the support of his family or the payment of his debts, or will be for the interest of his estate or children, the guardian may sell the same under like proceedings as required by law to authorize the sale of real estate by the guardian of a minor. The court shall, if necessary, set off to the wife and children under fifteen years of age, of the insane person or to either sufficient of his property of such kind as it shall deem appropriate to support them for twelve months from the time he was adjudged insane. [Sec.3467.]

[Sidenote: Custody]

The priority of claim to the custody of any insane person, habitual drunkard, or spendthrift aforesaid, shall be:

1. The legally appointed guardian.
2. The husband or wife.
3. The parents.
4. The children. [Sec.3470.]

CHAPTER VI.

APPRENTICING AND ADOPTION OF CHILDREN.

[Sidenote: Minors.]

Any minor child may be bound to service until the attainment of the age of legal majority as hereinafter described. [Sec.3471.]

[Sidenote: Indenture.]

Such binding must be by written indenture, specifying the age of the minor and the terms of agreement. If the minor is more than twelve years of age and not a pauper, the indenture must be signed by him of his own free will. [Sec.3472.]

[Sidenote: Consent of parent or guardian.]

A written consent must be appended to or endorsed upon such agreement, and signed by one of the following persons, to-wit:

1. By the father of the minor; but if he is dead or has abandoned his family, or is for any cause incapacitated from giving his assent, then
 2. By the mother; and if she be dead or unable, or incapacitated for giving such assent, then,
 3. By the guardian; and if there be no guardian, then by the clerk of the district court.
- [Sec.3473.]

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[Sidenote: Natural guardian removed.]

Upon complaint being made to the district court of the proper county, verified by affidavit, that the father or mother of a minor child is from habitual intemperance and vicious and brutal conduct, or from vicious, brutal and criminal conduct toward said minor child, an unsuitable person to retain the guardianship and control the education of such child, the court may, if it find the allegations in the complaint manifestly true, appoint a proper guardian for the child, and may if expedient, also direct that said child be bound as an apprentice to some suitable person until he attains his majority. But nothing herein shall be so construed as to take such minor child if the mother be a proper guardian. [Sec.3492.]

The same proceedings may take place and a like order be made, when the mother, who for any cause became the guardian of her minor child, is in like manner found to be manifestly an improper person to retain such guardianship. [Sec.3493.]

[Sidenote: Schooling and treatment of minors.]

The master shall send said minor child, after the same be six years old, to school at least four months in each year, if there be a school in the district, and at all times the master shall clothe the minor in a comfortable and becoming manner. [Sec.3497.]

[Sidenote: Adoption of children. Who may adopt.]

Any person competent to make a will is authorized in manner hereinafter set forth, to adopt as his own the minor child of another, conferring thereby upon such child all the rights, privileges and responsibilities which would pertain to the child if born to the person adopting, in lawful wedlock. [Sec.3498.]

[Sidenote: Consent of parents or officer.]

In order thereto, the consent of both parents if living and not divorced or separated, and if divorced or separated, or, if unmarried, the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the consent of the survivor, or if both parents be dead, or the child shall have been and remain abandoned by them, then the consent of the mayor of the city where the child is living, or if not in a city, then the clerk of the district court of the county where the child is living, shall be given to such adoption, by an instrument in writing signed by the parties or party consenting, and stating the names of the parents, if known, the name of the child, if known, the name of the person adopting such child, and the residence of all, if known, and declaring the name by which such child is hereafter to be called and known, and stating also that such child is to be given to the person adopting, for the purpose of adoption as his own child. [Sec.3499]

[Sidenote: Instrument acknowledged and recorded.]

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Such instrument in writing shall be also signed by the person adopting and shall be acknowledged by all parties thereto in the same manner as deeds affecting real estate are required to be acknowledged; and shall be recorded in the recorder's office in the county where the person adopting resides, and shall be indexed with the name of the parents by adoption as grantors and the child as grantee, in its original name if stated in the instrument, [Sec.3500.] A strict compliance in every particular with the provisions of the statutes is essential to constitute a legal adoption and to confer upon the adopted child rights of inheritance. If a minor child has a guardian his consent must be obtained before the child can be legally adopted.

[Sidenote: Effect.]

Upon the execution, acknowledgment and filing for record of such instrument, the rights, duties and relations between the parent and child by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exists by law between parent and child by lawful birth. [Sec.3501]. The right of a child by adoption to inherit from the parents by adoption, depends upon a strict compliance with the requirements of the law in every particular, including the acknowledgment and recording of the articles of adoption. It is also essential that the instrument shall be filed for record before the death of the adopted parent and while the child is a minor. A child by adoption does not lose the right to inherit from his natural parents, but is entitled to all rights of inheritance from both natural and adopted parents.

[Sidenote: Maltreatment.]

In case of maltreatment committed or allowed by the adopted parent, or palpable neglect of duty on his part, toward such child, the custody thereof may be taken from him and entrusted to another at his expense, if so ordered by the district court of the county where the parent resides; or the court may, on showing of the facts, require from the adopted parent, bond with security, in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty towards the child on the part of the parent; but no action of the court in the premises shall affect or diminish the acquired right of inheritance on the part of the child, to the extent of such right in a child of natural birth. [Sec.3502.]

[Sidenote: Home for the friendless Powers.]

Any home for the friendless incorporated under the laws of this state, shall have authority to receive, control and dispose of minor children, under the following provisions. In case of the death or legal incapacity of the father, or in case of his abandoning or neglecting to provide for his children, the mother shall be considered their legal guardian for the purpose of making surrender of them to the charge and custody of such corporation; and in all cases where the person or persons legally authorized to act as the guardian or guardians of any child are not known, the mayor of

the town or city where such home is located, may, in his discretion, surrender such child to said home. [Sec.3503.]

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[Sidenote: Surrender of child.]

In case it shall be shown to any judge of a court of record, or to the mayor, or to any justice of the peace, within such city or town, that the father of any child is dead, or has abandoned his family, or is an habitual drunkard, or imprisoned for crime, and the mother of such child is an habitual drunkard or is in prison for crime, or the inmate of a house of ill-fame, or is dead or has abandoned her family, or that the parents of any child have abandoned or neglected to provide for it, then such judge, mayor, or justice of the peace may, if he thinks the welfare of the child requires it, surrender such child to said home. [Sec.3504]

[Sidenote: Home becomes guardian.]

When a child has been surrendered to any home for the friendless according to the provisions of these sections, such home becomes the legal guardian of such child, and may exercise the rights and authority of parents over such children and may apprentice or provide for the adoption of the same. [Sec.3505.]

CHAPTER VII.

WILLS AND LETTERS OF ADMINISTRATION.

[Sidenote: Who may make wills.]

[Sidenote: Of what property]

Any person of full age and sound mind may dispose, by will, of all his property except what is sufficient to pay his debts, or what is allowed as a homestead, or otherwise given by law as privileged property to his wife and family. [Sec.3522.] The validity of a will depends upon the mental capacity of a testator and the fact that he was uninfluenced in making the disposition of his property. If it appears that the testator was incapable of exercising discretion and sound judgment and of fully realizing the effect and consequences of the will, though he may not be absolutely insane, he will not be in such mental condition that he can make a legal will. If he is of weak mind and it appears that he was imposed upon or unduly influenced, such facts will invalidate the will. A testator having testamentary capacity may dispose of his property in any manner, and to any person he may choose, and may deprive his heirs of any share in his estate, without any explanation or any express declaration of disinheritance. The fact that a will is unjust and unreasonable, in the absence of proof of undue influence, or insufficient capacity, will not render the will void.

[Sidenote: Subsequent property.]

Property to be subsequently acquired may be devised when the intention is clear and explicit. [Sec.3523.] If the intention to convey property acquired after the execution of the will is apparent or may be inferred from a fair construction of the language used, it will be sufficient, although the intention may not be directly expressed.

[Sidenote: Verbal wills.]

Personal property to the value of three hundred dollars may be bequeathed by a verbal will, if witnessed by two competent witnesses. [Sec.3524.]

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[Sidenote: Soldier or mariner.]

A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed. [Sec.3525.]

[Sidenote: In writing. Witnessed. Signed.]

All other wills, to be valid, must be in writing, witnessed by two competent witnesses and signed by the testator, or by some other person in his presence and by his express direction. [Sec.3526.] It is necessary that the witnesses shall subscribe the will, but not that they shall have any knowledge of its contents, nor that they shall see the testator sign it. It is sufficient if the signature is adopted or acknowledged in their presence. If a will is made with the intention of disposing of real property it must be executed according to the requirements of the laws of the state where the real property is situated.

[Sidenote: Interest of witness.]

No subscribing witness to any will can derive any benefit therefrom, unless there be two disinterested and competent witnesses to the same. [Sec.3527.] But if, without a will, he would be entitled to any portion of the testator's estate, he may still receive such portion to the extent in value of the amount devised. [Sec.3528.]

[Sidenote: Revocation.]

Wills can be revoked in whole or in part, only by being canceled or destroyed by the act or direction of the testator with the intention of so revoking them, or by the execution of subsequent wills. [Sec.3529.] The birth of a child after the execution of a will but before the death of the testator, operates as a revocation of the will, and the birth and recognition of an illegitimate child has the same effect. Declarations of the testator to the effect that he intended to revoke the will, will not be sufficient to prove a cancellation.

[Sidenote: Cancellation.]

When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. [Sec.3530.]

[Sidenote: Executors.]

If no executors are named in the will, one or more may be appointed to carry it into effect. [Sec.3532.]

[Sidenote: Posthumous children.]

Posthumous children unprovided for by the father's will, shall inherit the same interest as though no will had been made. [Sec.3534.]

[Sidenote: Heirs of a devisee.]

If a devisee die before the testator, his heirs shall inherit the amount so devised to him unless from the terms of the will a contrary intent is manifest. [Sec.3537.] The word heir in this section does not include the widow of the testator, and she cannot inherit from a child to whom property has been devised by his father, but who has died before the father.

[Sidenote: Married women.]

A married woman may act as executor independent of her husband. [Sec.3545.]

[Sidenote: Minors.]

If a minor under eighteen years of age is appointed executor, there is a temporary vacancy as to him until he reaches that age. [Sec.3546.]

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[Sidenote: Administration. Who entitled. Order.]

In other cases where an executor is not appointed by will, administration shall be granted:

1. To the wife of the deceased;
2. To his next of kin;
3. To his creditors;
4. To any other person whom the court may select. [Sec.3555.]

[Sidenote: Classes united.]

Individuals belonging to the same or different classes, may be united as administrators whenever such course is deemed expedient. [Sec.3556.]

[Sidenote: Time allowed.]

To each of the above classes in succession a period of twenty days, commencing with the burial of the deceased, is allowed within which to apply for administration upon the estate. [Sec.3557.]

CHAPTER VIII.

SETTLEMENT OF THE ESTATE—DESCENT AND DISTRIBUTION OF PROPERTY.

[Sidenote: Exempt personal property.]

When the deceased leaves a widow, all the personal property which, in his hands as head of the family, would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her property in her own right, and be exempt in her hands as in the hands of the decedent. [Sec.3575.] This provision secures an advantage to the wife which does not exist in favor of the husband. Upon the death of the wife all personal property belonging to her, whether exempt or not, passes to her administrator to be distributed by him among her heirs. A widow is not entitled to pension money, although the same was exempt in the hands of her husband, the exemption being for the benefit of the pensioner as such, and not as head of a family.

[Sidenote: Life insurance.]

The avails of any life insurance or any other sum of money made payable by any mutual aid or benevolent society upon the death of a member of such society, are not subject to

the debts of the deceased, except by special contract or arrangement, but shall in other respects, be disposed of like other property left by the deceased. [Sec.3576.] A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary shall inure to the separate use of the husband or wife and children of said individual, independently of his or her creditors. And the avails of all policies of insurance on the life of an individual payable to his surviving widow, shall be exempt from liabilities for all debts of such beneficiary contracted prior to the death of the deceased, provided that in any case the total exemption for the benefit of any one person shall not exceed the sum of five thousand dollars. [Sec.1756, Sup.] The contract between the assured and the insurance company, cannot be changed in any particular without the consent of the company, and a testator cannot, by will, change the beneficiary named in the policy unless it is expressly so provided in the contract.

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Where a policy is made payable to the assured or his legal representatives, the proceeds of the policy will pass to the administrator of his estate, and will be paid to the wife and children, but no part can be distributed to other heirs. If the assured leaves a wife or husband and no children, the entire proceeds of the policy will go to the wife or husband, and after they have passed into the hands of the beneficiary, they will not be subject to execution for the payment of his or her debts, provided they do not exceed the sum of five thousand dollars.

A wife is not her husband's "legal heir" and the entire proceeds of a policy or certificate of insurance made payable to the assured or his "legal heirs" will go to the children of the deceased.

[Sidenote: Allowance to widow and children.]

The court shall if necessary, set off to the widow and children under fifteen years of age, of the decedent, or to either, sufficient of the property of such kind as it shall deem appropriate to support them for twelve months from the time of his death. [Sec.3579.] The allowance to the widow takes priority over all other claims against the estate, and should be paid immediately. If the widow and children have no other means of support the allowance may be made though the estate is insolvent. It is no part of the dower interest, but is a separate and distinct right which may be made in addition to dower, or even in cases where by contract made before marriage, all rights to dower and inheritance have been relinquished. Real estate may be sold if necessary, where the personal property is not sufficient to provide for the allowance to the widow and children, and the widow may claim the allowance although there are no children, and she may have property of her own, if the income of such property is not sufficient for her support.

[Sidenote: Expenses of funeral.]

As soon as the executors are possessed of sufficient means, over and above the expenses of administration, they shall pay off the charges of the last sickness and funeral of deceased. [Sec.3622.]

[Sidenote: Allowance.]

They shall, in the next place, pay any allowance which may be made by the court for the maintenance of the widow and minor children. [Sec.3623.]

After the funeral expenses and the allowance to the widow and children have been paid, the claims against the estate will be discharged in the order provided by law, after

which, the balance of the property, devised by will after all expenses of administration have been paid, will be distributed to the different legatees.

[Sidenote: Descent and distribution. Personal property.]

The personal property of the deceased, not necessary for the payment of debts, nor otherwise disposed of as hereinbefore provided, shall be distributed to the same persons and in the same proportions as though it were real estate. [Sec.3640.] A husband cannot, by will, deprive his wife of her share in his personal estate, after his death, but he may dispose of it during his lifetime in any manner he may choose.

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[Sidenote: Payment.]

The distributive shares shall be paid over as fast as the executors can properly do so. [Sec.3641.]

[Sidenote: In kind.]

The property itself shall be distributed in kind whenever that can be done satisfactorily and equitably. In other cases the court may direct the property to be sold, and the proceeds to be distributed. [Sec.3641.]

[Sidenote: Partial distribution.]

When the circumstances of the family require it, the court, in addition to what is hereinbefore set apart for their use, may direct a partial distribution of the money or effects on hand. [Sec.3643.]

[Sidenote: Share of husband or wife.]

[Sidenote: Dower and curtesy.]

One-third in value of all the legal or equitable estates in real property, possessed by the husband at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the wife has made no relinquishment of her right, shall be set apart as her property in fee-simple, if she survive him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband. All provisions made in this chapter in regard to the widow of a deceased husband, shall be applicable to the surviving husband of a deceased wife. The estates of dower and curtesy are hereby abolished. [Sec.3644] While the estate of dower is abolished by statute, and a wife takes her distributive share of the property in its stead, yet this distributive share is still commonly designated by the term "dower." The dower interest of the wife is not subject to the debts of her husband. A wife may release her right of dower in real property by joining in a joint deed with her husband, although the deed may contain no express relinquishment of dower. Contracts between husband and wife, though for a legal and valuable consideration, or with a view to separation are invalid, the interest of either during the lifetime of both, being merely contingent and inchoate, but an agreement previous to marriage by which each waives all right in the other's estate, or by which the wife relinquishes her right of dower, is valid. A woman can claim no dower in her husband's estate, after his death, if she has procured a divorce from him while living and the divorce is in force at the time of his death. Where the provisions of a will gives the wife a certain interest in the estate, she may always elect whether she will take her dower interest or under the will.

[Sidenote: Homestead.]

The distributive share of the widow shall be so set off as to include the ordinary dwelling-house given by law to the homestead, or so much thereof as will be equal to the share allotted to her by the last section, unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect of prejudicing the rights of creditors. [Sec.3645.] If the distributive share of either husband or wife is set out to the survivor from the homestead, it will still retain its homestead character, and will be exempt from execution for the payment of debts.

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[Sidenote: Widow of alien.]

The widow of a non-resident alien shall be entitled to the same rights in the property of her husband, as a resident, except as against a purchaser from the decedent.

[Sec.3646.] The term “non-resident alien” does not refer to one who resides out of the United States, but to non-residents of the state, who may reside in other states; the purpose of the statute being to encourage the purchase of lands within the state from non-resident owners, and to protect purchasers of such real estate from claims for dower or distributive share therein.

[Sidenote: How set off.]

The share thus allotted to her may be set off by the mutual consent of all parties interested, when such consent can be obtained, or it may be set off by referees appointed by the court. [Sec.3647.]

[Sidenote: Application]

The application for such measurement by referees, may be made any time after twenty days and within ten years after the death of the husband, and must specify the particular tracts of land in which she claims her share, and ask the appointment of referees. [Sec.3648.]

[Sidenote: Widow's share not affected by will.]

The widow's share cannot be affected by any will of her husband, unless she consents thereto within six months after notice to her of the provisions of the will by the other parties interested in the estate, which consent shall be entered on the proper records of the district court. [Sec.3656.] This provision applies equally to the husband's rights under the will of the wife, and it applies to wills made before marriage, as well as to those executed after marriage. Where there is no express provision in the will that a devise to the wife is in lieu of dower, she will take her distributive share of the estate in addition to the property devised to her by will, unless the allowance of dower would be inconsistent with other provisions of the will. The devise of a life estate to a wife will not defeat her right to her distributive share in the real estate owned by the husband at the time of his death.

[Sidenote: Descent. To children.]

Subject to the rights and charges hereinbefore contemplated, the remaining estate of which the decedent died, shall, in the absence of other arrangements by will, descend in equal shares to his children. [Sec.3657.]

[Sidenote: Share of deceased child.]



If any one of his children be dead, the heirs of such child shall inherit his share in accordance with the rules herein prescribed in the same manner as though such child had outlived his parents. [Sec.3658.] The mother of a child which dies while both of its parents are living cannot, upon the death of its father, claim any share in his estate, as heir of such child.

[Sidenote: Wife and parents.]

If the intestate leave no issue, the one-half of his estate shall go to his parents and the other half to his wife; if he leaves no wife, the portion which would have gone to her, shall go to his parents, [Sec.3659.] The one-third which the wife takes as her distributive share is all that may be held exempt from debts. The additional share of the estate which she takes in case there are no children, is subject to claims by creditors of the husband.

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[Sidenote: Surviving parents.]

If one of his parents be dead, the portion which would have gone to such deceased parent, shall go to the surviving parent, including the portion which would have gone to the intestate's wife had she been living. [Sec.3660.]

[Sidenote: Heirs of parents.]

If both parents be dead, then the portion which would have fallen to their share, by the above rules shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on through ascending ancestors and their issue. [Sec.3661.]

[Sidenote: Wife and her heirs.]

If heirs are not thus found, the portion uninherited shall go to the wife of the intestate, or to her heirs if dead, according to like rules; and if he has had more than one wife who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead, such heirs taking by right of representation. [Sec.3662.]

[Sidenote: Advancement.]

Property given by an intestate by way of advancement to an heir, shall be considered part of the estate so far as regards the division and distribution thereof, and shall be taken by such heir, towards his share of the estate at what it would now be worth if in the condition in which it was given to him. But if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof. [Sec.3663.] A gift to an heir by way of advancement, cannot be considered as any part of the estate for the purpose of increasing the distributive share of the widow, but is to be estimated as part of such heir's share of the property, after the allowance to the wife of her interest.

[Sidenote: Where there are no heirs.]

If there be property remaining uninherited, it shall escheat to the state. [Sec.3665.]

[Sidenote: Illegitimate children. Inherit from mother.]

Illegitimate children inherit from the mother and the mother from the children. [Sec.3670.] A child born at any time during lawful wedlock is presumed by the law to be legitimate, but where questions of inheritance are involved, this presumption may be overcome by proof to the contrary.

[Sidenote: Inherit from father.]

They shall inherit from the father whenever the paternity is proven during the life of the father, or they have been recognized by him as his children, but such recognition must have been general and notorious or else in writing. [Sec.3671.] The recognition in writing need not be a formal avowal. Any writing, as by letter or otherwise, is sufficient. For the purposes of inheritance an illegitimate child stands on exactly the same footing as if it were legitimate after it has been recognized by the father, and the birth and recognition of such child revoke a will in the same manner as the birth of a legitimate child, subsequent to the execution of the will.

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[Sidenote: Father inherits from child.]

Under such circumstances, if the recognition of relationship has been mutual, the father may inherit from his illegitimate children. [Sec.3672.]

CHAPTER IX.

HOMESTEAD AND EXEMPTIONS.

[Sidenote: Homestead exempt.]

Where there is no special declaration of the statute to the contrary, the homestead of every family, whether owned by the husband or wife is exempt from judicial sale, [Sec.3163.] A homestead right may exist in property purchased under a bond for a deed, if payments have been made and the purchaser is in possession. Actual occupancy is necessary to invest property with the homestead character, but as the exemption right is for the benefit of the whole family and not alone of the owner, the fact that the head of the family is absent, and may even have acquired property and residence in another state with the intention of removing his family there, will not divest the homestead of its exemption right, so long as the family continues to occupy it. And the fact that the husband has abandoned the homestead will not affect the homestead right, so long as the wife and family remain in occupancy.

The homestead right may belong to one of several tenants in common of undivided property, or in a leasehold interest. It may attach to portions of a building—as where rooms or floors in a building are used for homestead purposes and the rest of the building is not so used. Where part of a building is owned or occupied by a family as a home, and the other part is used for a different purpose, that part used as a home may be exempt, while the other portion may be sold under execution. The exemption right may be lost by the execution of a mortgage or contract expressly making the homestead liable, in which both husband and wife join; or it may be forfeited when the homestead is used as a saloon or for any other purpose in violation of the prohibitory liquor law, with the knowledge and consent of the owner, and this is true even though such unlawful use is without the consent of the wife of the owner. In such case it is subject to judgment obtained because of such illegal use. [Sec.2419.] If the homestead is sold, the proceeds are exempt only when invested in the purchase of another homestead, but the exemption does not follow the proceeds out of the state, and where the homestead was sold and the proceeds invested in a homestead in another state, and this was afterwards sold and the proceeds again invested in a homestead in this state, it was held that the homestead exemption did not attach to the second homestead in Iowa. Removal from the homestead without intention of returning will be sufficient to forfeit the homestead right, but the length of time of absence, in itself, will not constitute abandonment, so long as the intention to return exists.

[Sidenote: Family defined.]

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A widow or widower, though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife. [Sec.3164.]

[Sidenote: Conveyance or incumbrance.]

A conveyance or incumbrance by the owner is of no validity unless the husband and wife, if the owner is married, concur in, and sign the joint instrument. [Sec.3165.] Any conveyance or contract, such as a mortgage, lease, assignment of contract of purchase, or any act in any manner affecting the title or right of occupancy of the homestead by either party, will be absolutely void, unless concurred in by the other. If the consent of the wife is fraudulently obtained by the husband, the conveyance or incumbrance will be valid, unless it appears that the purchaser or mortgagee had knowledge of the fraud. A mortgage given for the purchase money will be valid though given alone by the party taking the legal title.

[Sidenote: Liable for taxes.]

The homestead is liable for taxes accruing thereon, and if platted as hereinafter directed, is liable only for such taxes and subject to mechanics' liens for work, labor, or material, done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same. [Sec.3166.] All the taxes against the owner of the homestead become liens thereon, unless it is platted as directed by statute.

[Sidenote: Liable for debts.]

The homestead may be sold on execution for debts contracted prior to the purchase thereof, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property of the debtor liable to execution. [Sec.3167.] Debts contracted after the acquisition of the property, but before it has acquired the homestead character by actual occupancy, may be enforced against the property. A judgment upon a debt contracted prior to the purchase of the homestead, although such judgment is not rendered until after the property has acquired the homestead character, is a lien upon the homestead.

[Sidenote: Debts created by written contract.]

The homestead may be sold for debts created by written contract, executed by the persons having the power to convey and expressly stipulating that the homestead is liable therefor, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property pledged for the payment of the debt in the same written contract. [Sec.3168.] Any written contract other than a mortgage or other

conveyance, will be sufficient to render the homestead liable for debts, provided it contains the necessary stipulations, and is signed by the proper parties.

[Sidenote: What constitutes.]

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The homestead must embrace the house used as a home by the owner thereof, and if he has two or more houses thus used by him at different times and places, he may select which he will retain as his homestead. [Sec.3159.] The husband may select his homestead and make the same his home without the consent of his wife, and the absence of the wife will not affect its homestead character. The fact that the husband is the legal head of the family invests him with the power of establishing his home wherever he may choose, with or without the assent of his wife. Use is essential to give property a homestead character, and an intention to occupy is not sufficient in the absence of actual residence.

[Sidenote: Embraces what.]

It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots or tracts, unless they are contiguous, or unless they are habitually and in good faith used as a part of the same homestead. [Sec.3170.]

[Sidenote: Extent.]

If within a town plat it must not exceed one-half an acre in extent, and if not within a town plat, it must not embrace in the aggregate more than forty acres. But if, when thus limited, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount. [Sec.3171.]

[Sidenote: Dwelling appurtenances.]

It must not embrace more than one dwelling house, or any other buildings except as such are properly appurtenant to the homestead; but a shop or other building situated thereon, and really used and occupied by the owner in the prosecution of his own ordinary business, and not exceeding three hundred dollars in value, may be deemed appurtenant to such homestead. [Sec.3172.]

[Sidenote: Selecting. Platting.]

The owner or the husband or wife, may select the homestead and cause it to be marked out, platted, and recorded as provided in the next section. A failure in this respect does not leave the homestead liable, but the officer having an execution against the property of such defendant, may cause the homestead to be marked off, platted and recorded and may add the expense thence arising to the amount embraced in the execution. [Sec.3173.]

[Sidenote: Description. Recording.]

The homestead shall be marked off by fixed and visible monuments, and in giving the description thereof, the direction and distance of the starting point from some corner of

the dwelling-house shall be stated. The description and plat shall then be recorded by the recorder in a book to be called the "homestead book," which shall be provided with a proper index. [Sec.3174.]

[Sidenote: Changes.]

The owner may from time to time change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or may change it entirely, but such changes shall not prejudice conveyances or liens made or created previously thereto, and no change of the entire homestead made without the concurrence of the husband or wife, shall affect his or her right or those of the children. [Sec.3175.]

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[Sidenote: New homestead exempt.]

The new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former homestead would have been exempt, but in no other, nor in any greater degree. [Sec.3176.]

[Sidenote: Survivor to occupy.]

Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is disposed of according to law. [Sec.3182.] The survivor may elect to retain the homestead in lieu of his or her distributive share of the estate, but in such case the interest is not one which confers any title to the property which can be conveyed or which will descend to heirs or be subject to the lieu of a judgment, but it is merely a life interest which may be terminated whenever the survivor ceases to use and occupy the homestead as such. Whenever the survivor elects to retain the homestead during life in lieu of dower, it cannot be changed for another homestead, and the right will be lost by abandonment.

[Sidenote: Election to retain. Descent. Exemption.]

The setting off of the distributive share of the husband or wife in the real estate of the deceased, shall be such a disposal of the homestead as is contemplated in the preceding section. But the survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased; but if there be no such survivor, the homestead descends to the issue of either husband or wife according to the rules of descent, unless otherwise directed by will, and is to be held by such issue exempt from any antecedent debts of their parents or their own. [Sec.3183.]

[Sidenote: When sold.]

If there is no such survivor or issue the homestead is liable to be sold for the payment of any debts to which it might at that time be subjected, if it had never been held as a homestead. [Sec.3184.]

[Sidenote: Devise.]

Subject to the rights of the surviving husband or wife, as declared by law, the homestead may be devised like other real estate of the testator. [Sec.3185.] The homestead will remain exempt in the hands of the heirs because of the homestead right of the ancestors, although the property is not occupied as a homestead by such heirs.

[Sidenote: Exemptions. To head of family.]

If a debtor is a resident of this state, and is the head of a family, he may hold exempt from execution the following property: All wearing apparel of himself and family kept for



actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same; one musket or rifle and shot-gun; all private libraries, family bibles, portraits, pictures, musical instruments, and paintings, not kept for the purpose of sale; a seat or pew occupied by the debtor or his family in any house of public worship; an interest in a public or private burying ground, not exceeding one acre for any defendant; two

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cows and calf; one horse, unless a horse is exempt as hereinafter provided; fifty sheep and the wool therefrom and the materials manufactured from such wool; six stands of bees; five hogs, and all pigs under six months; the necessary food for all animals exempt from execution, for six months; all flax raised by the defendant on not exceeding one acre of ground and the manufactures therefrom; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture, not exceeding two hundred dollars in value; all spinning-wheels and looms, one sewing machine and other instruments of domestic labor kept for actual use; the necessary provisions and fuel for the use of the family for six months; the proper tools, instruments or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher or professor; the horse or the team consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle with the proper harness or tackle, by the use of which the debtor, if a physician, public officer, farmer, teamster, or other laborer habitually earns his living; and to the debtor, if a printer, there shall also be exempt a printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars. Any person entitled to any of the exemptions mentioned in this section does not waive his rights thereto by failing to designate or select such exempt property or by failing to object to a levy thereon, unless failing or refusing so to do when required to make such designation or selection by the officers about to levy. [Sec.4297.] The husband and not the wife is recognized by law as the "head of the family," but upon the death of the husband the wife becomes the head of the family and as such is entitled to these exemptions.

[Sidenote: Life Insurance.]

All life insurance is exempt from the debts of the assured and from those of his widow contracted prior to his death, provided such exemption does not exceed the sum of five thousand dollars. [Sec.1756 Sup.]

[Sidenote: Family defined.]

The word "family," as used in section 4297, does not include strangers or boarders lodging with the family. [Sec.4298.]

[Sidenote: Perpetual earnings.]

The earnings of such debtor for his personal services, or those of his family, at any time within ninety days next preceding the levy, are also exempt from execution and attachment. [Sec.4299.]

[Sidenote: Unmarried persons. Non-residents.]

There shall be exempt to an unmarried man not the head of a family, and to non-residents their ordinary wearing apparel and trunk necessary to contain the same. [Sec.4300.]

[Sidenote: Persons starting to leave the state.]

When the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing apparel of himself and family, and such other property, in addition, as he may select, in all not exceeding seventy-five dollars in value; which property shall be selected by the debtor and appraised; but any person coming into this state with the intention of remaining shall be considered a resident. [Sec.4801.]

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[Sidenote: Purchase money.]

None of the exemptions prescribed in this chapter shall be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied. [Sec.4302.]

[Sidenote: Absconding debtor.]

Where a debtor absconds and leaves his family, such property shall be exempt in the hands of the wife and children, or either of them. [Sec.4303.]

[Sidenote: Sewing machine.]

If the debtor is a seamstress, one sewing-machine shall be exempt from execution and attachment. [Sec.4304.]

[Sidenote: Pension money.]

All money received by any person, resident of the state, as a pension from the United States government; whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him, shall be exempt from execution or attachment, or seizure by or under any legal process whatever, whether such pensioner shall be the head of a family or not. [Sec.4305.]

[Sidenote: Homestead.]

The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations of such pension money, shall also be exempt as is now provided by law of this state in relation to homesteads; and such exemption shall also apply to debts of such pensioner contracted prior to the purchase of such homestead. [Sec.4306.]

[Sidenote: Damages.]

Where a wrongful act produces death, and the deceased leaves a husband, wife, child or parent, the damages shall not be liable for the payment of debts. [Sec.3731.]

CHAPTER X.

CRIMINAL LAW-ILLEGITIMATE CHILDREN.

[Sidenote: Rape.]

If any person ravish or carnally know any female of the age of thirteen years or more, by force and against her will, or carnally know and abuse any female child under the age of thirteen years, he shall be punished by imprisonment in the penitentiary for life or any term of years. [Sec.5160.]

[Sidenote: Intent to commit rape.]

If any person assault a female with intent to commit a rape he shall be punished by imprisonment in the penitentiary not exceeding twenty years. [Sec.5172.]

[Sidenote: Compelling to marry.]

If any person take any woman unlawfully and against her will, and by force, menace or duress, compel her to marry him, or to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years. [Sec.5161.]

[Sidenote: Carnal knowledge.]

If any person have carnal knowledge of any female by administering to her any substance, or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, or have such carnal knowledge of an idiot or female naturally of such imbecility of mind or weakness of body, as to prevent effectual resistance, he shall upon conviction, be punished as provided in the section relating to ravishment. [Sec.5162.]

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[Sidenote: Producing miscarriage of pregnant woman.]

If any person with intent to produce the miscarriage of any pregnant woman, wilfully administer to her any drug or substance whatever, or, with such intent, use any instrument or any means whatever, unless such miscarriage shall be necessary to save her life, he shall be imprisoned in the state prison for a term not exceeding five years, and be fined in a sum not exceeding one thousand dollars. [Sec.5163.]

[Sidenote: Enticing female child for prostitution.]

If any person take or entice away any unmarried female, under eighteen years of age, from her father, mother, guardian, or other person having the legal charge of her person, for the purpose of prostitution, he shall upon conviction be punished by imprisonment in the penitentiary for not more than three years, or by fine of not more than one thousand dollars and imprisonment in the county jail not more than one year. [Sec.5164.]

[Sidenote: Enticing away child.]

If any person maliciously, forcibly or fraudulently lead, take, decoy, or entice away any child under the age of fourteen years, with the intent to detain or conceal such child from its parent, guardian, or any other person having the lawful charge of such child, he shall be punished by imprisonment in the penitentiary not more than ten years, or by a fine not exceeding one thousand dollars or by both such fine and imprisonment. [Sec.5165.]

[Sidenote: Seduction.]

If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. [Sec.5166.]

[Sidenote: Marriage a bar.]

If, before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offense. [Sec.5167.] An offer, by the defendant, to marry the woman, will not be a bar to a prosecution for seduction, as nothing but actual marriage will constitute such bar.

[Sidenote: Adultery.]

Every person who commits the crime of adultery shall be punished by imprisonment in the penitentiary not more than three years, or by a fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year; and when the crime is committed between parties, only one of whom is married, both are guilty of adultery

and shall be punished accordingly. No prosecution for adultery can be commenced but on complaint of the husband or wife. [Sec.5317.]

[Sidenote: Evidence in cases of rape or seduction.]

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The defendant in a prosecution for a rape, or for an assault with intent to commit a rape, or for enticing or taking away an unmarried female of previously chaste character, for the purpose of prostitution, or aiding or assisting therein, or for seducing or debauching any unmarried woman of previously chaste character, cannot be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense. [Sec.5958, as amended by act of the Twenty-fifth General Assembly.] The corroboration required by this section need not be by evidence of witnesses to the act, but may be wholly by circumstances and facts which tend to connect the accused with the commission of the crime.

[Sidenote: Bigamy.]

If any person who has a former husband or wife living, marry another person, or continue to cohabit with such second husband or wife in this state, he or she, except in cases mentioned in the following section, is guilty of bigamy, and shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year. [Sec.5318.]

[Sidenote: Exceptions.]

The provisions of the preceding section do not extend to any person whose husband or wife has continuously remained beyond seas, or who has voluntarily withdrawn from the other and remained absent for the space of three years together, the party marrying again, not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony. [Sec.5319.]

[Sidenote: Knowingly marrying husband or wife.]

Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be imprisoned in the penitentiary not exceeding three years, or by fine of not more than three hundred dollars and imprisonment in the county jail not exceeding one year. [Sec.5320.]

[Sidenote: Lewdness.]

If any man or woman not being married to each other lewdly and viciously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of gross lewdness and designedly make an open and indecent, or obscene exposure of his or her person, or the person of another, every such person shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars. [Sec.5321.]

[Sidenote: Keeping house of ill-fame.]



If any person keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, such person shall be punished by imprisonment in the penitentiary not less than six months nor more than five years. [Sec.5322.]

[Sidenote: Houses of ill-fame.]

Houses of ill-fame kept for the purpose of prostitution and lewdness, gambling houses, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted, to the disturbance of others, are nuisances, and may be abated and punished as provided in this chapter. [Sec.5472.]

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[Sidenote: Lease rendered void.]

When the lessee of a dwelling house is convicted of keeping the same as a house of ill-fame, the lease or contract for letting such house is, at the option of the lessor, void, and such lessor may thereupon have the like remedy to secure possession as against a tenant holding over after the expiration of his term. [Sec.5323.]

[Sidenote: Leasing house for such purpose.]

If any person let any house, knowing that the lessee intends to use it as a place of resort for the purpose of prostitution or lewdness, or knowingly permit such lessee to use the same for such purpose, he shall be punished by fine not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months. [Sec.5324.]

[Sidenote: Enticing to house of ill-fame.]

If any person entice back into a life of shame any person who has heretofore been guilty of the crime of prostitution, or who shall inveigle or entice any female, before reputed virtuous, to a house of ill-fame, or knowingly conceal or assist or abet in concealing such female, so deluded or enticed for the purpose of prostitution or lewdness, he shall be punished by imprisonment in the penitentiary not less than three nor more than ten years. [Sec.5325.]

[Sidenote: Penalty for prostitution.]

If any person, for the purpose of prostitution or lewdness resorts to, uses, occupies or inhabits any house of ill-fame, or place kept for such purpose, or if any person be found at any hotel, boarding house, cigar store or other place, leading a life of prostitution and lewdness, such person shall be punished by imprisonment in the penitentiary not more than five years. [Sec.5326.]

[Sidenote: Incest.]

If any person marry his father's sister, mother's sister, father's widow, wife's mother, daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter, or, if any woman marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son; or if any person, being within the degrees of consanguinity or affinity in which marriages are prohibited by this section, carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years and not less than one year. [Sec.5351.]

[Sidenote: Illegitimate children. Complaint.]

When any woman residing in any county in the state is delivered of a bastard child, or is pregnant with a child, which, if born alive, will be a bastard, complaint may be made in writing by any person to the district court of the county where she resides, stating that fact, and charging the proper person with being the father thereof. [Sec.6113.]

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[Sidenote: Judgment.]

If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums and in such manner as the court shall direct, and with the costs of the suit. [Sec.6119.]

[Sidenote: Marriage of parents.]

Illegitimate children become legitimate by the subsequent marriage of their parents. [Sec.3391.]

CHAPTER XI.

MISCELLANEOUS PROVISIONS.

[Sidenote: Action for damages under prohibitory liquor law.]

Every wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support, by any intoxicated person, or in consequence of the intoxication habitual or otherwise, of any person, shall have a right of action in his or her name, against any person, who shall, by selling intoxicating liquors, cause the intoxication of such person, for all damages actually sustained, as well as exemplary damages; and a married woman shall have the same right to bring suits, prosecute and control the same, and the amount recovered, as if a single woman, and all damages recovered by a minor under this action, shall be paid to such minor, or his parent, guardian, or next friend, as the court shall direct, and all suits for damages under this section shall be by civil action in any court having jurisdiction thereof. [Sec.2418.] Under this section a woman is entitled to recover for the death of her husband, or for personal injuries to him, or to herself caused by intoxication. She may recover damages for mental anguish, shame, or suffering, resulting from injuries to the person, and for injuries to, or loss of property, and means of support.

[Sidenote: Parties in action for seduction.]

An unmarried female may prosecute as plaintiff, an action for her own seduction and recover such damages as may be found in her favor. [Sec.3760.] In a civil action for damages it is not necessary that an unmarried woman be of previously chaste character to enable her to recover for loss of health, physical suffering, *etc.*, but without that she cannot recover for loss of character.

[Sidenote: For injury or death of minor child.]

A father, or in case of his death, or imprisonment, or desertion of his family, the mother may prosecute as plaintiff, an action for the expenses and actual loss of service resulting from the injury or death of a minor child. [Sec.3761.]

[Sidenote: Married women]

A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried, and an attachment or judgment in such action shall be enforced by or against her as if she were a single woman. [Sec.3667.]

[Sidenote: Defense.]

If husband or wife are sued together, the wife may defend for her own right; and if either neglect to defend, the other may defend for that one also. [Sec.3768.]

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[Sidenote: When husband or wife deserts family.]

When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; and under like circumstances the same right shall apply to the husband upon the desertion of the wife. [Sec.3769.]

[Sidenote: Evidence. Husband and wife.]

Neither the husband nor wife shall in any case, be a witness against the other, except in a criminal prosecution for a crime committed one against the other, or in a civil action or proceeding one against the other; but they may in all civil and criminal cases, be witness for each other. [Sec.4891.] In prosecutions for adultery or bigamy the husband or wife, as the case may be, is a competent witness against the other.

[Sidenote: Communications between husband and wife.]

Neither husband nor wife can be examined in any case as to any communication made by one to the other while married, nor shall they after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [Sec.4892.]

[Sidenote: Women eligible to office.]

Women are eligible to all school offices in the state, including those of county superintendent and school director. [Sec.Sec.2828, 2829.]

No person shall be disqualified for holding the office of county recorder on account of sex. [Sec.471.]

[Sidenote: Police matrons.]

Mayors of all cities having a population of twenty-five thousand or more, are authorized, by act of the Twenty-fifth General Assembly to appoint police matrons to take charge of all women and children confined at police stations. They are to search the persons of such women and children, accompany them to court, and "give them such comfort as may be in their power." No woman is eligible to this office who is under thirty years of age. She must be of good moral character, and sound physical health. Her application must be endorsed by at least ten women of good standing and residents of the city in which such appointment is made. When appointed she shall hold office until removed by death, resignation or discharge, but she can be dismissed only after charges have been made against her conduct and such charges have been investigated. She has the right to enter work houses where women are confined, at all times. She shall be subject to the board of police or to the chief of police. Her salary shall not be less than the minimum paid to patrolmen.

[Sidenote: Right of suffrage.]

In any election hereafter held in any city, incorporated town, or school district, for the purpose of issuing any bonds for municipal or school purposes, or for the purpose of borrowing money, or for the purpose of increasing the tax levy, the right of any citizen to vote shall not be denied or abridged on account of sex, and women may vote at such elections, the same as men, under the same qualifications and restrictions. [Act of the Twenty-fifth General Assembly.]

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CHAPTER XII.

CONCLUSION.

[Sidenote: Common law in Iowa.]

[Sidenote: Unmarried women. Property rights.]

[Sidenote: Married women.]

[Sidenote: Law will not protect them.]

The rules of the common law have never prevailed in all their harshness in Iowa. At the time when the young state was born, public sentiment already demanded a code more just, and, as before noted, the first law for the protection or extension of the property rights of married women, was passed in 1846. Modifications and changes have followed each other through the entire history of our state legislation, until our present law approaches a condition so nearly one of equal and exact justice between the sexes, that it might serve as a model for other states less progressive than our own. Except in the way of political disabilities our law makes no discrimination against or in favor of women. They have all the rights and privileges enjoyed by men, and are subject to the same duties and responsibilities. Before the law they are equal, but, as a matter of fact, where the law does not interfere, how is it in regard to the property rights of the wife? The unmarried woman has control of her property, if she has any, to the same extent that an unmarried man has control of his. If she accumulates money or property by an expenditure of her time and labor, it belongs to her alone. She can keep it, give it away, will it, spend it, enjoy it, with the same unquestioned right and freedom enjoyed by her brother. But a married woman possesses no such independence, notwithstanding the laws in her favor. The circumstances of her life may be such, that the law will be powerless to protect her in the enjoyment of property which by right belongs to her. The relations and respective duties of husband and wife are such that the husband usually and necessarily controls the business and the family income. The amount of that income over and above the expenditures for family expenses, he invests as he chooses. If it is his will to invest it in real estate, the law says she may have a share of it after his death. If he deposits it in a bank or purchases stocks, bonds, mortgages, or other personal property, the law again says part of it shall be hers, if she survives him, and he has not disposed of it while living, as he has a legal right to do. In either case, she cannot control a single dollar during the life of her husband, if he chooses to deprive her of that privilege. The property accumulated during the marriage may be acquired by the wise judgment, strict economy and self-denial of the wife in connection with the time and labor of the husband. It may even be obtained wholly by her efforts, even though not arising from the profits of any "separate business" recognized by the law. Her contribution to the family income may, and generally does, come into the possession of

the husband and he invests it in property to which he naturally and as a matter of course takes the title. During his life he controls it. After his death one-third will belong to the wife, if there are children. If there are no children one-half will go to his heirs no matter how distant the relationship may be.

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[Sidenote: Law may result in hardship and suffering.]

In cases where the joint accumulations of husband and wife are only sufficient to support the wife in comfort after the death of her husband, the law of descent as it now stands, may result in positive hardship and suffering. No matter how small the amount of property belonging to a deceased husband may be, one-half of it will descend to his heirs, if he has no children, and the wife be left with no means of support. Of course the result would be the same in the case of the husband upon the death of the wife, if she held the title to all of the common property. That this law of descent has not operated to the disadvantage of the husband, but invariably to the disadvantage of the wife, is not due to any defect in either the letter or spirit of the existing law, but is the natural and inevitable result of the custom which gives the husband the title to and the control of the joint earnings of himself and wife.

[Sidenote: Change or modification needed.]

It is difficult to suggest a remedy or to conceive of any law which would adjust and equalize the relations of husband and wife in the ownership and control of common property during the lifetime of both, but if some just and wise legislator can devise some change or modification of the present law, which will not interfere with the husband's proper and necessary position as breadwinner and manager of the business of the family partnership, and which will give to the wife control of a portion of the family income while the husband lives, and when the total amount of property held by either, is only sufficient to afford a comfortable support to the other, will after the death of the owner of the property, secure it all to husband or wife, as the case may be, he will add to the laws of the state the one requisite necessary to secure to women equal property rights with men, and a more just distribution of intestate property.