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STUDY OF THE LAWS GOVERNING THE DISTRIBUTION OF LANDED PROPERTY IN THE UNITED STATES

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Chapter V

Comparison of Tendencies in American States with General Laws of Inheritance in Foreign States

It is the purpose of this paper to show how the property of persons dying intestate descends in the various states, what share each person receives and under what conditions he receives it; and also to compare the laws of the various states, calling attention to the uniform principles incorporated in their statutes, at the same time pointing out their differences; and, finally, to compare the laws governing the distribution of property in this country with those of other countries, particularly with respect to economic effects. It is not the purpose of the writer to give in this brief paper all the law that has been written upon the distribution of property, for this would occupy several volumes; but, rather to discuss the more vital laws which make our American nation different from any other in the distribution of property. No attempt is made to give the various decisions and interpretations of the courts upon statutes, except when necessary to explain the meaning of words and certain sections of statutes, which are ambiguous.

This is especially necessary because of the composite character of our laws of descent. As the American language has borrowed words from every known language and construed them into meanings very different from

those of the mother tongue, so have the various states borrowed laws from the whole civilized globe, which had to be construed by the courts before they had any meaning at all. We have the English law, not as the English have it, but as it has been Americanized; the French law, not the original Code Napolean, but an interpretation of what we thought the Code Napolean ought to be; the laws of Spain, Germany, and various other countries.

We have tried out primogeniture, gavelkind, estates male tail, and estates female tail, and as a result of this variety in the sources of our laws of descent we may expect to find American laws of descent a fruitful field for the student of land problems.

CHAPTER 1

DEFINITIONS OF TERMS AND GENERAL PRINCIPLES

It is very important that terms used in a legal sense be carefully defined in order to understand how the courts have treated the several subjects. The definitions given herein are those that the courts have given in various cases.

Descent ordinarily denotes the vesting of the estate by operation of law immediately on the death of the ancestor. (Good vs. Bullard, 157 Mass. 329.)

Intestate is one who dies intestate, dies without disposing of his property by last will and testament. (Kohnig vs. Dunbar, 21 Idaho 258.)

Heir at Common Law is he who is begotten or born in lawful wedlock and upon whom the law casts the estate in lands, tenements, and hereditaments. There is no such thing as unlawful heirs. The heirship is not made by contract but by law.

There are two ways of transfering property by descent and by purchase. (Gill's estate 79 Ia. 296.) In general, the legislature has absolute power to control the manner in which property descends or is distributed. (Nat. Safe Deposit Co. vs Stead, 250 Ill.

584.) Any change in the law of descent operates immediately upon any estate that may ultimately descend. (Wunderle vs. Wunderle, 144 Ill. 40.) The supreme court of Wisconsin has taken a different position by holding that the right to demand property passed by inheritance is a natural right or an inherent right subject only to the reasonable regulation of the legislature. (Nunnemacher vs. State, 129 Wis. 190.) However, the opposite view has been held by all the other state courts in the United States and also by the United States Supreme Court. Therefore, we can safely say that the rule promulgated in the two Illinois cases cited above is the general rule and the accepted law of the country outside of the state of Wisconsin.

According to the above decisions the law vests the estate immediately, upon the death of the ancestor, in some one. If it be real estate, it is vested in the heirs. This is the rule in every state in the union. The only question in regard to real estate is, who are the heirs and how much does each one take? This is settled by the statute of descent and distribution of the state in which the real estate is

located. If a person whose legal domicile is in Tennessee and who owned a tract of land in Kentucky died intestate, the statutory law of descent and distribution of Kentucky would govern. It would name the heirs and the amount each is to receive. Tennessee's law might be one thing and Kentucky's another. However, if the deceased owned personal property in Kentucky instead of land, the law of the state of Tennessee would name the heirs and would govern the amount each is to receive. There is another important difference between real estate and personal property. In real estate the title is vested immediately in the heirs, while in personal property it is vested in an executor or administrator. One of the chief reasons for this is because personal property is first taken for the payment of debts of a decedent. If John Jones dies intestate owning personal property to the amount of $5000 and real estate to the amount of $10000, and owing debts aggregating $6000, the personal property is first used in the payment of the debts, and the creditors for the unpaid balance may file suit against the heirs who inherited the real estate and make them contribute pro rata, according to the amount of real estate received

by them. The records of the probate court will show just what disposition is made of the personal property, while the records of no court, unless there is a suit filed or action taken in some other form, will show the distribution of the real estate. If the heirs desire to continue to own it jointly and do not deed it from one to the other, the title to the estate remains in the name of decedent. A good proportion of all real estate is in the name of persons who are dead. There should be some record kept of transfers by death, so that any one could go to the recorder's office and find out in whom title vests to any given piece of property.

The statutory laws of some of the states have made other persons heirs than those above defined. In some states the husband has been made an heir of the wife and the wife an heir of the husband. Such statutes will be discussed later in the chapter on the amount of property the husband or wife receives on the death of the other. Illegitimate children are heirs of the mother in all of the states, the same as other children, and under certain circumstances are the heirs of the father in most of the states. Adopted

children are heirs of the adopting father and mother in nearly all of the states. In some states they can inherit from the adopting parents only but not from the brothers and sisters of the adopting parents nor their collateral relations.

At common law the right to inherit sprang from the obligation, fealty, or duty which the tenant owed his lord. This fealty devolved upon all natural born subjects in return for the protection supposed to be afforded him by the sovereign. The sovereign protected his life, liberty, and property, and, for the service thus rendered, the sovereign could call on him for support. He was the upholder of the kingdom, the protector of the sovereign, and held his property at the will of the sovereign. At common law an alien could not inherit nor could an inheritance be passed through an alien, as he has no inheritable blood. He was not a supporter of the sovereign nor an upholder of the kingdom, and for this reason the sovereign owed him no duty, and he could not possess any of the sovereign's lands. This common law rule has been abrogated by statutes in the various states, which statutes will be set out

more fully in the next chapter. The Common Law was handed down to us from England and goes back to an uncertain time. It has been made by the customs of the people, and the decisions of the courts.

CANONS OF THE COMMON LAW.

1. An inheritance shall lineally descend to the issue of the person who died last seized in infinitum, but shall never lineally ascend.

2. Male shall be admitted before the female.

3. Where there are two or more males in equal degree, the oldest only inherits but the females altogether.

4. Lineal descendants shall represent their ancestors- that is, they inherit in lieu of a deceased ancestor.

5. On failure of lineal descendants, the inheritance shall descend to the collateral relation of the blood of the person who was last in actual possession of the real estate; or if the person who has the title to real estate dies before he has obtained possession of same, the real estate is inherited by the person who last had both title and possession, and if said person is dead, the real estate goes to

his heirs, instead of the heirs of the person who had title and not possession.

6. Collateral heirs must be his next collateral kinsman of the blood.

The first, second, and third canons of the common law have been abolished by practically all the states; the fourth has been adopted practically as it is by all of the states; the fifth and sixth have been modified and changed but adopted in some form by all of the states. There is not a state in the Union that holds to the rigid rule of the first canon, and it matters not whether a person was seized with the property or not, if he die intestate, it goes to his heirs. At common law if John Jones owned a fee in a tract of land, but Sam Smith owned an estate for years in the same tract of land, and if Jones had never been seized or come into actual possession of the land, it would pass to the heirs of the person last seized, with the land, or to the heirs of the person from whom Jones acquired same, and would not go to the heirs of Jones. If it came from his grandfather, it would go back to the heirs of his grandfather. How-

ever, in every state of the American Union, it would go to the heirs of Jones.

As to the second canon, no state in the Union, as among the immediate children, recognizes any difference between the male and female heirs. In several of the states, the father inherits before the mother, and the male ascendants before the female; but in no state is the male descendant preferred to the female descendant. The third canon was tried out in the colonial days, but, by the time the Constitution was adopted, all of the states had abolished the law of primogeniture, estate male tail, and female tail. Gavelkind, or the division of the real estate equally among the sons, was never practiced in this country except in parts of New England during the early colonial period. From the adoption of the Constitution down to the present time a man has been allowed to do what he pleased with his real estate, although this is not true of any other country. In England he generally has only a life estate in the property, and when he dies, it goes to his eldest son. In France it goes to his children equally, but in this country, he can give it to whom he pleases, except that

he can not give away the interest of his surviving wife. Our laws have endeavored to make real estate allodial, and, on account of this fact, we have no aristocracy dependent upon the soil and the ownership of land is not a prerequisite for entrance to society.

CHAPTER II

THE RIGHTS OF A WIDOW AND MINOR CHILDREN

If a man dies intestate, he is satisfied with the law as it is in the distribution of his estate or on account of his inertia and procrastination has delayed in making his will. As a general thing, the surviving widow has very little out of her separate property to support herself and her minor children. The lawmakers, recognizing this fact, have set apart certain property for her support and also to the support of her minor children. This is not subject to the debts of the deceased husband, but it is for the purpose of buying provisions, clothes, and other necessities for herself and family.

In Alabama, Florida, Idaho,and North Dakota, the widow is given $1000.00 out of the personal estate for the support of herself and the minor children. In Arizona, Arkansas, North Carolina, and South Carolina, $500.00 is set apart; in Kentucky and South Dakota, $750.00; in California, Colorado, Connecticut, District of Columbia, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Montana, Massachusetts,

Michigan, Minnesota, and Mississippi, in the country, the minor is allowed certain specified articles; while in town, instead of specified articles she is given $250.00; in Missouri specified articles and $300.00 additional; in Nebraska, Nevada, New Hampshire, New Mexico and New York specified articles and $250.00 additional; in Ohio specified articles and $500.00 in lieu of a homestead; in Oklahoma, Oregon, Pennsylvania, and Rhode Island certain articles of value not to exceed $300.00; in Tennessee, Texas, Vermont, and Virginia real or personal property to the amount of $2000.00 or both; in Washington, Wisconsin, Wyoming and West Virginia $200.00; and in Illinois $400.00. As stated above, these exemptions are not subject to the debts of the estate and are the first charges against the estate, and they come before any distribution is made.

In addition to the foregoing exemptions, there is generally set apart to the widow one of two things-homestead or dower, and sometimes both. If she chooses homestead, there is set off to her, in addition to the personal property, a homestead in real estate, which consists of the dwelling house and a required amount of land surrounding it. Both the amount and the value of

the homestead differ in the various states. The allowance in various states is as follows: in Connecticut, Illinois, Kentucky, New Jersey, New Mexico, New York, North Carolina, Ohio, South Carolina, Tennessee, and West Virginia real estate to the value of $1000.00; in Alabama, Colorado, Louisiana, Mississippi, if it is in the country, one hundred and sixty acres of land, if not valued more than $3000.00 or real estate in the city to this amount; in Virginia, Washington and Nebraska real estate to the amount of $2000.00; in Arizona and Arkansas one acre in town or one hundred and sixty acres of land in the country not to exceed $2500.00 in value; in Montana real estate not to exceed $2500.00; in Wyoming, Michigan, and Oregon, real estate not to exceed $1500.00 in value; in California, Idaho, Nevada, and North Dakota 160 acres of land not to exceed $5000.00 in value, or one lot in town not to exceed $5000.00; in Texas 200 acres if in country or lot in town to the value of $5000.00; in Wisconsin forty acres in country or one-fourth of an acre in city or village, with dwelling house and appurtenances thereon not exceeding $5000.00 in value; in Florida one hundred and sixty acres in the country or one half of an acre in an incor-

porated town, regardless of value; in Georgia, $1600.00 in real or personal property or in both; in Indiana, $600.00 in real or personal property; in Iowa, one half of an acre in town or forty acres in the country; in Kansas, one acre, if in town, or one hundred and sixty acres in the country; in Maine, $500.00 worth of real estate; in Massachusetts, $800.00 worth of property; in Minnesota, eighty acres of land in the country or one lot in town not to exceed one half of an acre; in Missouri, $1500.00 worth of real estate if in the country or in cities under forty thousand, $3000.00 if in cities over forty thousand; in New Hampshire, $500.00 worth of property; in Oklahoma, one hundred and sixty acres if in the country or one acre in city or town lots; in Pennsylvania, $300.00 worth of property, together with the wearing apparel; in Utah, $1500.00 in real or personal property to the head of the family with $250.00 additional for each minor child; and in Vermont, $500.00 of property. There are no homestead exemptions in Delaware, District of Columbia, and Rhode Island. We see by comparison of the above there is no general rule as to the amount of the homestead in the United States, as it varies from nothing up to $5000.00.

When a will is probated, it is necessary to prove that the testator is dead; but when a person dies intestate, there is no necessity for proof of death, for the real estate vests immediately in the heirs in the manner prescribed by the statutes. If the estate is very much in debt or letters of administration have to be issued, (and they are not very often issued without the estate is considerably involved or there is a large amount of perscnal property and a great many heirs among whom the personal property is to be divided) then in that case it is necessary to prove the death of the decedent; however, a good many estates are divided and settled outside of court. Of course it would be impossible to follow this course when there is a will. In this case the will governs and takes precedence to the laws of descent and distribution, but the surviving widow does not have to accept the provisions of a will, but may take according to the statutes of the state that are in force at the time of death of decedent; but she is the only person that can do this; and she has to make her election as to whether or not she shall claim her statutory right

or accept the provisions of the will; and when she accepts one, she cannot take the other. It is by far the better course to have letters of administration issued if there be any personal property, so that the probate court records will show what disposition was made of the property; from the standpoint of the student of land tenure it would be a good practice, if there were a record of the disposition of real estate, but there is no such record, except where the real estate is devised, and in that case the will book will show. The only way in which real estate appears in the record is when there is not sufficient personal property to pay the debts of the decedent and the creditors have to bring suit to have the real estate sold by order of court to satisfy the balance of the debts remaining unpaid, then the records of the court will show what disposition is made of the real estate.

CHAPTER III

THE ALIEN'S RIGHT TO INHERIT AND PASS AN INHERITANCE

At common law an alien could neither inherit nor pass an inheritance, as he did not have any inheritable blood. This has been changed by statutory law in most of the states so that resident aliens can inherit and pass an inheritance, while non-resident aliens can not. In some of the states aliens have the same rights as citizens, while in other states, they have no rights whatever in regard to inheriting real estate or passing real estate to their heirs. If there be a treaty with a foreign government, giving to its citizens in this country the right to hold lands and to inherit same or have certain time to dispose of same, it is the supreme law of the land, although there is a state statute to the contrary. (Chirac vs. Chirac 2 Wheat 259.) In all of the states the alien has undoubtedly the right to hold and dispose of personal property by will or otherwise or pass personal property to his heirs according to the law of his domicile. By way of illustration, if a citizen of France owns personal property in any of the states of the United States and

has heirs resident in France, the heirs residing in France may inherit the property, and it may descend to them according to the law of descent and distribution of France and not according to the law of the state in which the personal property is located. However, this is not the rule in Mississippi.

On account of real estate mortgages being considered personal property, the rules governing personal property govern these mortgages; and for this reason he may mortgage his property and may recover mortgage debts in those states in which there is a positive prohibition to hold lands. (Hughes vs. Edwards 6 U. S. 142.) He has a right to bequeath personal property in any state of the Union, (10 Wend 9.) and also the right to receive it in any state of the Union. (McLearn vs. Wallace 9 U. S. 559.)

The rights of an alien in regard to real estate, however, are different. Some states forbid him to hold it at all; and others only permit him to hold it for a term of years. In these latter states, if he does not dispose of his holdings at

the expiration of the time limit, the land escheates to the state according to the laws of the state in which the land is located, but not until suit is brought by the state and until a court of competent jurisdiction had decided upon it and adjudged that it has escheated to the state.

Several of the states have no restrictions whatever on aliens in regard to their inheriting lands and passing an inheritance to others. They have the same rights as citizens in inheriting and passing inheritance in the following states: Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Philippine Islands, Porto Rico, Rhode Island, Utah, Vermont, West Virginia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, and South Dakota.

There are restrictions placed on resident aliens as to their inheriting, holding, and passing an inheritance in lands in the following states: Arizona, Indiana, Kentucky, Oklahoma, Pennsylvania, South Carolina, and Virginia. In Arizona they can-

not hold lands longer than five years, unless they have filed their declaration of intention of becoming a citizen of the United States, after which they have the same rights as citizens. In Indiana and Wisconsin they can take, hold, transfer, and inherit lands up to three hundred and twenty acres, but, if they acquire by inheritance or purchase lands in excess of this amount, they must dispose of them within five years. If they do not do this, the state can file suit and cause the land to escheat to the state. In Kentucky an alien may hold real estate for eight years, when acquired by descent, but he may hold the home in which he lives for a period of twenty-one years; but if the alien has filed his declaration of intention to become a citizen of the United States, he can hold and acquire real estate without limitation the same as other citizens. In Oklahoma and South Carolina an alien is prohibited from holding real estate, and such real estate acquired by inheritance must be disposed of within five years. In Pennsylvania an alien may buy lands up to five thousand acres if the net annual income does not exceed $20000.00. In South

Carolina, Virginia, and New York any alien, not an alien enemy, may hold and transmit property by inheritance, but an alien enemy can not acquire, inherit, or transmit property.

There are restrictions placed on the acquisition of land by non-resident aliens in the following states: South Carolina, Oklahoma, Arizona, Connecticut, District of Columbia, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Wyoming, Pennsylvania, Texas, Indiana, and Wisconsin. In Arizona, South Carolina, and Oklahoma non-resident aliens who have acquired real estate by inheritance are not permitted to hold it longer than five years; they can transmit inheritance in these states provided the heirs are competent to inherit from them. In the District of Columbia non-resident aliens cannot inherit or pass an inheritance unless the country from which the alien comes permits citizens of the United States similar privileges. In Kentucky non-resident aliens can not hold lands acquired by inheritance longer than eight years. In Mississippi non-resident aliens are not permitted to hold or acquire lands by inheritance, but they

can take a mortgage on lands, and lands acquired in this way, must be disposed of within twenty years. In Missouri non-resident aliens can acquire lands by inheritance and not otherwise. In Montana non-resident aliens must claim the real estate inherited within five years or they are barred from the inheritance. In Nebraska, New Hampshire, and Wyoming they can not inherit or pass an inheritance in lands. In Pennsylvania they can inherit and pass an inheritance in lands up to five thousand acres if the net annual income does not exceed $20000.00, but beyond this amount it is void and escheats to the state. In Texas they must dispose of lands acquired by inheritance within ten years or the lands escheat to the state. In Indiana and Wisconsin they can inherit and pass an inheritance in lands up to three hundred and twenty acres, but lands acquired beyond this amount must be disposed of within five years. In Iowa they can hold lands acquired by inheritance for twenty years.

CHAPTER IV

THE RIGHTS OF A SURVIVING SPOUSE

What law governs the rights of a surviving spouse? Is it the law that was in force at the time of the marriage of the surviving husband or wife and decedent, is it the law that was in force at the time the property was acquired, or is it the law that is in force at the time that the decedent dies? It matters not what the law was formerly, but the law of decedent's domicile at the time of his death governs in the distribution of personal property, and the law of the place of the real estate at the time of decedent's death, governs as to the distribution of the real estate. The rights of the surviving spouse in the property of the deceased may be changed at any time by the legislature before the death of either party. It may abolish the claim of the husband in the wife's property, and likewise it may change, modify, or abolish the right of a wife in the husband's property. The state has absolute power and control over the succession to property. It can give it to whom it pleases or cause it to escheat to the state. This is

not true of Wisconsin under the decision hereinbefore quoted.

Decedent's domicile is very important. If he is domiciled in one place, one distribution is made of the property, while if he is domiciled in another place, another distribution is made of it. The laws of the states vary so, that it is very well to know what domicile is sufficient for purposes of inheritance. To constitute domicile, two things must concur; first, residence, and second, the intention to make that place home. (Greene vs. Windham 13 Me. 225.) How long does decedent have to live in a place before that place becomes his domicile for the purpose of descent or how long does he have to live in a place before the law of the place governs as to the transmission of his property if he die intestate? The test of the proposition is, "where is his home?" Various other ways are used to arrive at this fact: where does he vote? Where does he pay his income tax, his personal taxes? Where does he live the greater part of the year? The legislature has full power to make requirements in regard to proof of domicile, and it has power to declare certain

things to be full proof of domicile, provided it has jurisdiction over the thing or the person. If the real property be within the state it can say to whom it shall descend, as the right of inheritance is a privilege conferred by the state, and the state has a right to confer its privileges upon whom it sees fit. The law attributes to every person at birth the domicile of his father, if he be legitinate; or, if illegitimate, the domicile of his mother. It may be changed from time to time by the will of the parent, guardian, or any one in custody of the child; but as soon as a person reaches his majority, he can change his domicile, the continuance of which depends upon the person's desire and upon what he does, or interpretation of his will by his acts. No person can have more than one domicile for one and the same purpose at the same time, but every person has a domicile somewhere until he changes it. He holds his old domicile until he acquires a new domicile elsewhere. If a person leaves home, goes to school, joins the army, makes a visit to a foreign country, etc., he holds his old domicile during this time, and, should he die, his property

would be distributed according to the laws of the state in which the domicile is located. A wife's domicile is that of her husband, but if she lives apart from her husband in another state, depending upon her own resources for support, she acquires domicile in that state.

Dower is the common law interest that a wife takes out of the lands of her husband, which is generally a life estate in one-third of the lands that the husband owns at the time of his death; or it may be an interest of one-third in all lands that the husband has been seized with during coverture and to which the wife has not in due form of law relinquished her rights. It was recognized in Magna Charta of King John of 1215. Coke says that it was certainly the law of England before the Norman Conquest. Blackstone says, "It is possible, therefore, that it might be with us the relic of a Danish custom; since according to the historians of that country, dower was introduced into Denmark by Swein, the father of our Canute the Great, out of gratitude to the Danish ladies, who sold all their jewels to ransom

him when taken a prisoner by the Vandals." It has been practiced ever since in England. The surviving wife was endowed with the income of one-third of the lands during her natural life. It was the law in all of the colonies up to the formation of our Constitution, but since that time it has been abolished by a good many of the states, so that most of the states of the Union give the surviving wife a portion of the estate in lieu of dower. Some of them give the surviving wife a certain portion of the estate, but she can have dower, if she so desires. She either selects dower or if she waives it, she receives the portion that is given her under the statute in lieu of dower. In most of the states dower has been abolished, and the surviving wife gets whatever the statute substitutes.

Curtesy is the common law interest that the husband takes out of the lands of his surviving wife. Perhaps the most accurate definition of curtesy is that given by Littleton, which has received frequent approval by the courts, to the effect that an estate by the curtesy is when a man taketh a wife seized in

fee simple or in fee tail general or seized as heir in special tail, and hath issue by the same wife, male or female, born alive, albeit the issue after dieth or liveth, hold the land during his life by the law of England. The rights of curtesy came about on account of the feudal system, that the husband having become dignified by having an interest in lands was bound to do homage to his superior lord; and the interest being once vested in him, it was the policy of the feudal system not to suffer it to terminate during the life of the husband, since otherwise the lord might lose the homage that was due from the land. The requisites of curtesy are marriage, issue, seizin of wife, and last, the death of the wife. In dower the surviving wife is endowed with only a life estate in one-third of the lands, while by the curtesy the husband takes a life estate in all of the lands of the wife. It is necessary before a surviving husband acquires an estate by the curtesy that there should be born to the deceased wife alive a child by the husband, while it is not necessary that a child be born to the surviv-

ing wife before she can have dower.

Dower and curtesy have been abolished in Arizona, California, Colorado, Idaho, Iowa, Indiana, Kansas, Maine, Montana, Michigan, Nebraxka, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington and Wyoming. Dower and Curtesy remain in the following states: Alabama, Alaska, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, North Carolina, Ohio, and Oregon. It is one half instead of one-third in Pennsylvania, Rhode Island, and South Carolina. Dower remains, but curtesy has been abolished, in Tennessee, Vermont, Virginia, West Virginia and Wisconsin. In Louisiana and Texas dower and curtesy were never known.

The following is a statement of the amount of property both real and personal that the surviving wife takes in the distribution of the estate of her deceased husband and also the part that a surviving husband takes in the distribution of his deceased wife's estate under certain stated conditions.

If decedent have no lineal descendants, the surviving husband or wife inherits all the real and personal property subject to the payment of debts in the following: Alaska, Colorado, Georgia, Kansas, Minnesota, Mississippi, New Mexico, Oregon, and Wisconsin.

If the deceased husband or wife have no lineal descendants but leaves a father or mother surviving, the surviving spouse inherits one half of the real and personal property in the following: California, Delaware, Florida, Hawaii, Idaho, Illinois, Maine, Michigan, Missouri, Nebraska, Nevada, Oklahoma, South Carolina, Texas, and Washington; in Utah, South Dakota and Pennsylvania, the surviving husband or wife takes all of the personal property and real estate up to $5000.00 and one half of the remaining portion above that amount which goes to the father and mother jointly and equally or to the survivor of them; in Vermont, the surviving husband or wife takes all the estate up to $2000.00 and one half of the remaining portion; in North Dakota the surviving husband or wife takes the whole estate up to $15000.00

and one half of the remaining portion above this amount; in New Hampshire and Massachusetts, the surviving husband or wife takes one half of the real estate and all the personal property up to $5000.00 and one half of the remaining personal property.

If the deceased husband or wife left only one child surviving, the surviving spouse takes one half of the personal property and the real estate in the following: California, Colorado, Florida, Georgia, Indiana, Idaho, Kansas, Mississsppi, Missouri, Montana, Nevada, North Dakota, South Dakota, Oklahoma, Utah, Washington, Wyoming.

If the decedent left issue surviving him, the surviving husband or wife takes a child's part in the following; Florida, Georgia, Mississippi, and Missouri.

If decedent left more than one child surviving, the surviving husband or wife takes one-third of the real estate in fee simple and one-third of the personal property absolutely and remaining two-thirds is divided equally among the children in the following: California, Connecticut, Delaware, Hawaii, Idaho,

Indiana, Iowa, Maine, Montana, Nevada, North Dakota, South Carolina, South Dakota, Oklahoma, Utah, and Washington.

If decedent left no lineal descendants, nor father, mother, brother, nor sister, the whole estate descends to the surviving spouse in the following states; Alaska, Colorado, Georgia, Kansas, Minnesota, Mississippi, New Mexico, Oregon, Wisconsin, Arizona, Connecticut, Delaware, Idaho, Iowa, Michigan, Missouri, Montana, New York, North Dakota, and South Dakota.

If decedent leave no lineal descendants, nor father, mother, brother, sister, nor descendants of them, the surviving spouse inherits two-thirds of the estate in South Carolina.

In Iowa, if decedent leave no lineal descendants, the surviving husband or wife takes all the estate up to $7500.00 and one-half of the remaining portion of same above that sum goes to the surviving parents of decedent.

In Wyoming, if decedent leave no lineal descendants, the surviving husband or wife takes all the estate up to $20000.00 and three-fourths of the remainder above that amount, the other one-fourth goes

to the surviving parents of decedent.

Some successions depend upon the fact whether the property came by inheritance, purchase, or gift. Several of the states make a distinction in the distribution of the property and make the property that has descended to the intestate by inheritance, gift, or devise from an ancestor descend either to decedent's lineal descendants or to revert to some one who is of the blood of the original donor of the property. If the decedent have no issue nor descendants of issue, then the property generally goes to his next of kin of the blood of the original donor. It excludes all those who are not of the blood of the original donor. In Section 3558 of the Alabama Statute it is provided as follows: no distinction is made against heirs of half blood; except there is no distinction made between the whole and the half blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift from some of his ancestors; in which case, those who are not of the blood of the ancestor are to be excluded from the inheritance as against those of the same degree. The following states have the same or

similar provision in their statutes: Alabama, Arkansas, Connecticut, California, Delaware, Indiana, Maryland, Montana, Michigan, New Jersey, Nebraska, New York, North Dakota, Oklahoma, Ohio, Rhode Island, South Dakota, Tennessee and Utah.

Some of the states prefer the whole blood to the half blood; that is, a brother or sister of the whole blood inherits the whole estate, to the exclusion of brothers or sisters of the half blood. The states of Mississippi, Pennsylvania, and South Carolina have this provision.

In Florida, Kentucky, Missouri, Phillippine Islands, Porto Rico, Virginia, and West Virginia, the half blood inherit only one-half as much as kindred of the whole blood.

In Georgia, the whole blood comes first, then the half blood on the paternal side is preferred to the half blood on the maternal side.

A good many of the states have statutes which provide as follows: "If at the death of such child who dies under age, not having been married, all the other children of his parents are also dead,

and any of them have left issue, the estate that came to such child by inheritance from its parent descends to the issue of all the other children of the same parent." The following states have the above incorporated into the statutes: California, Connecticut, Hawaii, Kentucky, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Virginia, Washington, Wisconsin, New Hampshire, Utah, and Idaho, while Florida makes it revert to the heirs of the father.

In many states, if there be no children nor their descendants, nor surviving husband or wife, then the estate descends to the father and mother jointly and equally. The statutes of the following states provide this: Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Porto Rico, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, and Wisconsin.

In a number of states if there be no surviving husband or wife, no children, nor their descend-

ants, then estate descends to the father. The statutes of the following states provide this: Alaska, Arkansas, Delaware, Florida, Nevada, New York, Virginia, and West Virginia.

If there be no surviving husband or wife, no children nor their descendants, then property descends to the brothers and sisters or their descendants in the following states: Alabama, District of Columbia, New Jersey, North Carolina, Ohio, Philippine Islands, and Tennessee.

In Georgia if there be no surviving wife, children nor their descendants, the property descends then to the father, brother, and sisters jointly and equally. If there be no father, then the mother takes equally with the brothers and sisters in the place of the father.

In some states if there be no surviving husband or wife, no children, nor their descendants, then the property descends to the father, mother, brothers, and sisters, jointly and equally. The statutes of Illinois, Louisiana, Mississippi, Missouri, South Carolina and Wyoming provide this.

In Pennsylvania if there be no surviving spouse, no children nor their descendants, the property descends to the father and mother jointly for life with fee in the surviving brothers and sisters or their descendants.

In California, Massachusetts, Alabama and Michigan, if decedent makes a will and omits one of his children from the provisions of the will, the said child inherits, regardless of the will, and takes such portion of the estate as if the testator died intestate as to such child, but most of the states have no provision in their statutes in regard to children omitted in the will. If a will is made and a child is born after the will is written, the will does not hold good as to such child but may hold as to the rest, the share of the child being taken from all legatees in proportion to the amount of property each received under the will; that is, when all the property of decedent has been disposed of by will. If there is a balance undisposed of after the payment of debts, this balance is first applied to the settlement with the child. The difference between

this balance and the proportion the after born child is entitled to is raised as above stated.

If a person who dies intestate has made any advancement to any of his children, the child so advanced is charged with the advancement in the final distribution of the estate. The advancement is appraised as of date of the gift of same, but the advanced child is not charged with interest. The value of it at the time of gift is put into hotchpot or considered in the final distribution of the estate.

Ante-nuptial contracts are held good in practically all of the dower states if it is a fair and reasonable contract, without fraud or imposition. However, owing to the confidential relations of the parties, very few of these contracts are upheld by the courts. In order for them to hold good, the following must be observed: first, the jointure must take effect immediately upon the death of the husband; second, it must be at least for her own life and not for the life of another or for any terms of years or smaller than a life estate; third, it must be made to the surviving widow and not to another in

trust for her; fourth, it must be made in satisfaction of the whole dower and not in lieu of a portion of it; and fifth, it must be made before marriage. If it is made after marriage, the wife can either accept dower or the settlement, but not both.

A husband may sell any of the personal property which he owns without the wife becoming a party to the contract. This is true of every state in the Union. But it is not true of real estate. In the states where dower and curtesy are recognized, the personal property of the wife merges immediately upon the marriage into the custody and care of the husband. He has a right to sell and dispose of the same, but he does this merely as her agent. In the other states she has a right to sell and dispose of her separate personal estate.

The heirs are liable to creditors of decedent to the amount of property that comes into their hands for debts that are valid against the estate. The personal property that is not exempt to the wife and minor children is first used for the payment of the debts, and after this is used, the heirs have to

respond in accordance with the amount of property received by them. However, the heirs have a right to make any defense to the claim that the decedent might have made if living. They are in his shoes. They may sue and be sued. They can sue for debts owing to decedent, but they are not responsible for more than what they received by inheritance. If one of the heirs is forced to pay off the debts of decedent, he can sue the other heirs and make them contribute their proportionate part.

In order for a person to inherit the property of another, that person must be in being and capable of taking at the death of the person from whom he takes. There is only one exception to this rule, and that is posthumous children, or children born after the death of their father or mother. This rule only applies to intestate's estates and does not apply to wills. Any testator could will his property to children not in being at his death, that is, could make it depend upon a contingency.

The descendants of children represent the child, and take the part that their father or mother

would have inherited if living; and also the descendants of brothers and sisters represent them and would take the part their parent would have taken if living. All the children jointly take the portion their father or mother would have inherited.

CHAPTER V

The law of descent and distribution in the various states of the United States is such that it is impossible to create in this country a landed aristocracy such as that of England. The large estates of England probably would be broken up in a few generations, were it not for the law of primogeniture, which hands down to the eldest son all the lands intact that his father owned at the time of his death, subject, however, to the dower interest of the widow. The widow receives the income from one-third of all the lands of her former husband for her natural life. In consequence of this law less than five percent of the English people own ninety-five percent of the real estate, the average size of holdings of this landed gentry is over 750 acres, and at least 88 per cent of the farmers are tenants. On account of England's laws and her land policy, the best blood of England has been emigrating to other countries; and this movement was very rapid just before the beginning of the present World War. On account of her land policy England cannot begin to feed herself and

is dependent upon outside resources. If labor were very mobile, two or three years would be sufficient to destroy England's land policy, which is made possible by her law of primogeniture. The world is too highly civilized for such an enlightened country as England boasts herself to be, to have such unfair and unjust laws.

Germany, France and Austria have tried out the law of primogeniture and have abolished it. In these countries the property of an intestate is divided equally among the children, subject, however, to the interest of the surviving husband or wife. In Germany the wife receives one-fourth of the estate, consequently, one does not find large estates in Germany except in East Prussia; but her land is farmed intensively and economically. Had Germany such a law as England has today, she would have been wiped off the map by her enemies. She could not have fed her teeming millions, made guns and ammunition, and kept all of her able bodied men at the front. In France the surviving spouse receives from the estate of decedent one-half of the community prop-

erty, and one-fourth life estate in the separate property. On account of France's policy of equal portion her farm land is owned by small peasant farmers who cultivate the soil very intensively. This world war has tested France's resources. She has kept a big army at the front, made the greater part of her ammunition, guns, etc., nearly fed herself, while a great portion of her territory has been in the hands of the enemy.

It is argued and ably argued by some economists that England's policy of primogeniture was good because large estates can be cultivated more profitably than if the estates were divided up into smaller ones. This presupposes an increasing agricultural population and a more scientific cultivation of the soil than if the land is owned by peasant farmers. England's rural population decreased from 1851 to 1892, and she lost over one-third of her population. She had 1,253,800 farm laborers in 1851 while in 1892 she had only 780,700 in spite of the fact that she was buying her dairy and garden products from Denmark, France, Belgium and Holland. Undoubt-

edly a great portion of this decrease was caused by her land policy. If their lands were allodial and had some provisions in their statutes similar to the statutory provisions of the American states, there would be no danger in farms becoming too small to be profitably farmed.

In America if a person dies intestate and leaves an infant heir, it is only necessary for any heir or guardian of infant heir to file suit and have the property divided or sold . If the property cannot be divided without materially impairing its value, it is sold as a whole and not divided. If all the heirs are of age and have inherited an undivided interest in the land, any heir has the right to sue either for division or for sale. If the Court thought the property could not be divided without materially impairing its value it would be sold as a whole. These provisions alone insure us against the estates becoming too small to be farmed economically and advantageously. If they are sold they divide the proceeds of sale instead of dividing the land.

Our law recognizes the right of the youngest

the same as the eldest. It holds that a daughter has the same claim on the father that a son has; and furthermore that a father can will his property to whom he pleases; that if a son is disobedient, the father can cut him off without a dollar, if he so desires; but a father cannot do this in Germany, Austria, or France. He can cut him off in Germany by will, but he must state in the will why he has thus treated him; and if the son has repented, or the Court thinks that the reason of the father is insufficient or that the son has reformed, it will set the will aside and let the son take his portion of the estate, the same as the other children.

We have no statistics to show how much of the agricultural land is owned by what per cent of our people. According to the census report of 1910 the average farm contains 138 acres but this does not prove anything as one may own a dozen farms; and the same is true of foreign countries.

The laws of most of the states of the United States prevent non-resident aliens from owning real estate. In most of the states in which limited owner-

right of the surviving husband or wife. Under these regulations it is impossible to create a landed aristocracy as in England. One may own and have a large estate, but it can not be handed down through many generations intact, even though the testator desired it, for the interest of the wife, minor children, and creditors are beyond his testamentary will. The surviving husband or wife takes a larger interest in the estate in this country than they do in England. Entailed estates are prohibited and settlements can only be made to a limited extent, while these are the general practices in England. If instead of primogeniture entailed estates, and settlements, there were allodial estates, fee simple titles, and equal division among children subject to the rights of surviving husband or wife, the landed aristocracy of England would soon decay. Laws make customs. As it has been the policy of the law to divide property equally among the children, it has become the custom of our people to do this even though they make a will, and a will either enlarges the share given to the surviving husband or wife, cuts off some unappreciative child, charges heirs with

portions already advanced to them, or puts property in trust on account of some real or apparent defect of the beneficiary. Very seldom does a will give to one child the whole estate. If it is ever done, it is generally to the youngest or some other one of the children who have stayed at home and cared for the testator during his declining years. In America the testator can give his property to whom or what he pleases subject to the rights of the surviving spouse. This is not true of France, Austria, or Germany. This provision will cause children to care for their parents more than if it were otherwise.

Personal property is first taken for the payment of debts. In America if the personal property is not sufficient to satisfy all the creditors, the real estate may be subjected to the payment of debts. Any creditor or a combination of them can file suit against all the heirs that inherited real estate and cause such portion of the real estate as is necessary to be subjected to the payment of their debts. Judgment is obtained against them, the lands will be ordered sold by the Court, and if there be any proceeds

after payment of creditors in proportion to the amount of lands contributed by them to the payment of the debts. If the lands were sold as a whole, it would have no effect upon the size of holdings, but if a portion of the real estate is sold in order to pay the debts, it has an economic effect in that it causes the large estates to be divided up. As our lands are allodial, farms will tend to be held so that they will yield the maximum amount of products to a given amount of labor. In stating this proposition one assumes that farmers are becoming better educated and applying business methods to farming.

In France if a child inherits from his father he also inherits the obligations of his father, and is forced to pay his debts. He has the choice to refuse to take the proportion that he is entitled to as heir, and in the event that he so refuses, the part that he would have taken will descend to the child or children that inherit or assume the obligations of decedent. In the event that he so refuses to take his inheritance he is not

responsible for the debts of decedent. In this country the heir is only responsible to the creditors to the amount of property inherited by him and not otherwise. The creditor must prove his debt as required by law, and he has only a limited time to do this usually within two years after the letters of administration are issued. If he does not within the time specified, his debt is barred. Beyond this time the heir is not responsible. However, if the creditor was under some disability and did not sleep on his rights, and the delay has not placed any hardships on the heir, in most of the states he can still recover his debt, but not otherwise.

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