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DAUGHTERS, W[illegible]S

AND

MOTHERS

IN BRITISH COLUMBIA

SOME LAWS REGARDING THEM

COMPILED BY

HELEN GREGORY MACGILL, M.A., MUS. BACH.

1913

THE MOORE PRINTING CO., LTD.

VANCOUVER, B. C.

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FIRST EDITION

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DEDICATED

to the

COUNTESS OF ABERDEEN

Whose Deep and Abiding Interest in the Welfare of her Sex
has Endeared her to Women of all Nationalities.

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Ottawa, Canada

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INTRODUCTION

Upon several occasions different organizations in Vancouver have been fortunate enough to secure some leading lawyer, who in generous response to their request has addressed them on the laws of British Columbia regarding women and children.

The first of these lectures, given by Mr. A. E. Bull (late Police Magistrate), was delivered before the Local Council of Women, and later repeated for the benefit of the University Women's Club. We were indebted to Mr. J. S. Jamieson (Wilson & Jamieson) more than once, and also to Mr. F. G. T. Lucas (Lucas & Lucas), who spoke on the same subject at a public meeting held by the Pioneer Political Equality League.

The lectures always attracted deeply interested audiences to many of whom the status of the wife, the mother and the child in this Province was an unpleasant, ofttimes an incredible revelation.

Despite these addresses having been given by barristers of standing who were devoting particular attention to these matters, the statements contained therein from time to time have been flatly contradicted. Occasionally this unbelief has been due to mere unreasoning prejudice, more often to lack of information.

Many find it difficult to realize, for example, that if the husband of a childless woman dies without a properly drawn will the widow must divide the estate with her husband's relatives, and if none even to the remotest degree can be found, the Crown is entitled to the other portion.

The plan of arrangement followed so far as possible is to have each chapter opening

with a plain, simple statement, entirely untechnical, with quotations from the lecturers before-mentioned.

The Appendix supports each statement by verbatim extracts, either from the Revised Statutes of British Columbia (R. S., B. C.), or, where applicable, some authoritative writer on English law; book or author, and chapter and section being given from which the extract is culled.

This little compilation, the natural outgrowth of these lectures and discussions, is not offered with any idea of its being a textbook or legal authority, but simply as a popular little handbook of ready reference for those who know, and proof to those who doubt.

HELEN GREGORY MACGILL, M.A., Mus. B.

VANCOUVER, B. C.

AMENDMENTS

SOME LAWS

AS TO

Daughters, Wives and Mothers

CHAPTER I.

HOW BRITISH COLUMBIA GETS HER LAWS.

All interested in social conditions in this Province must have been impressed with the backward state in British Columbia of what is often called "domestic legislation." Persons engaged in philanthropic and charitable work frequently come in contact with cases of wives, mothers and children for whose wrongs or sufferings there lies no redress under our present laws. Sometimes there is no enactment meeting present day needs, sometimes the law on the statute books, having been passed in reigns of early British sovereigns, has out-

worn the conditions of modern life and is antiquated and unjust.

Good men need no law to compel them to right and justice but because there is no law, or a bad one, advantage may be taken by unjust, evil or weakly prejudiced persons and cruel suffering entailed upon those dependent upon them.

For many years deputations from Canadian associations of women have asked the Dominion Parliament at Ottawa to amend our Federal laws. Every session representatives from British Columbia women's societies urge our local legislators at Victoria to pass enactments bringing our Provincial laws more in accord with modern enlightenment and higher ideals of justice.

A loose presumption among both men and women in British Columbia that our laws are the same as those prevailing in England today, or in the province, or country in which the persons, so believing, formerly lived, leads them to discredit the real facts.

Sometimes it is put forth as an excuse that these laws were made in the "days when the

settlers married Siwash wives," but the laws of Provinces are not made thus. In order to show the source of British Columbia laws some brief historical reference is necessary.

On the 13th of January, 1849, Vancouver Island was created a Crown Colony and in 1856 representative government was introduced, Governor Sir James Douglas convening the first Legislative Assembly 12th of August, 1856.

By an Imperial proclamation issued 2nd of August, 1858, the Mainland was constituted a Crown Colony under the same Governor.

In 1866 the two colonies were merged in one and styled British Columbia. (Begg's History of British Columbia).

By proclamation dated 12th of November, 1858, Governor Douglas ordained that—

> The civil and criminal laws of England as the same exist at the date of said proclamation and so far as they are not from local circumstances inapplicable to the Colony of British Columbia, are and shall remain in full force within the said Colony, subject, of course, to future legislation.

After the union of the Island and the Mainland the aforesaid provision was extended to the united colony.

In handing down a decision Mr. Justice Clement speaks of British Columbia being "tied down to the law of 1858." He further adds—

> I am of the opinion that the use of the double negative throws the burden of proof on him who asserts that a given English law, statutory or otherwise, of date prior to 1858 was not introduced into British Columbia. He must establish the affirmative proposition that the law in question was from local circumstances inapplicable to British Columbia.

British Columbia Reports (Appeals) Watt vs. Watt, 10th Nov., 1907, Clement, J.

Thus it will be seen that where our local legislature at Victoria has passed no civil law, and the Federal Parliament at Ottawa no criminal law, reference in British Columbia is always taken to English law as it was in 1858.

CHAPTER II.

AGE FOR MARRIAGE.

A girl of twelve or a boy of fourteen may contract a legal marriage in British Columbia with the consent of the father or the guardian appointed by the father.

The mother's consent is not necessary if the father is living.

Even if marriage takes place before these ages, it is not deemed invalid, but only imperfect, and will be absolutely valid and binding if confirmed after fourteen and twelve, respectively.

These ages are not fixed by any statute of British Columbia. There being no enactment, recourse is had to English law under section 25 of the British Columbia Marriage Act.

While some legal authorities hold that it does not perhaps lie in the power of a Province to raise the age for marriage, other Provinces surmount this difficulty by fixing an age below which it is unlawful to either issue a license

or solemnize a marriage, subject to the following penalty under the Dominion Act.

DOMINION ACT RESPECTING OFFENCES RELATING TO THE LAW OF MARRIAGE.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

> Section 3.—Every one, who, being lawfully authorized, knowingly and willingly solemnizes any marriage in violation of the laws of the Province in which the marriage is solemnized, is guilty of a misdemeanor, and is liable to a fine or to one year's imprisonment.*

[*For Laws, see Appendix.*]

CHAPTER III.

GUARDIANSHIP OF CHILDREN.

For many years the University Women's Club, the Local Council of Women, the Political Equality League and other organizations in British Columbia have asked that the law give recognition to the right of the married

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* But if either party is under the age of seven, then the marriage is absolutely void.—Principles of the Common Law. Indermaur, Chap. VII., page 247.

mother to share equally with the father in the guardianship of their child. Under our present law, while the child of the unmarried mother belongs to her, the child of the married mother belongs exclusively to the father during his life time.

Until 1913, the father could will away from the mother the child unborn at the time of his death. This law was modified in England in 1886, but until February, 1913, British Columbia mothers were living under an Act passed in the time of Charles II. Like some other laws now happily obsolete, it was intended at the time of enactment to serve a good purpose. Before this, the King, as "father of his country," was the guardian of all "infants," viz., persons under twenty-one, and English history contains accounts of many disgraceful quarrels for the hand in marriage of this or that rich ward to be bestowed as reward for services rendered the sovereign.

So the Infants' Guardian Law was originally passed to limit the right of the King and to enable a father to act himself or appoint someone other than the King to stand as guardian to the child.

The local legislature at Victoria, after numerous requests from women's organizations, passed amendments to the Infants' Guardianship Act of British Columbia, 25th February, 1913, making it very similar to the English Act of 1886.

Under the law as now amended, although the powers of the mother are, in respect to guardianship, greater than before, they are still far more limited than those enjoyed by the father.

> "While the father's power is limited to a certain extent after death, and the mother stands in a more favourable position under the present Act than under the old law, the father still enjoys rights not possessed by the mother." (A. R. Creagh, to University Women's Club.)

In the lifetime of the father the mother in British Columbia has no right to her child's person or estate either against the father or the guardian he may choose to appoint. He or his nominee has the sole right to direct its management, education, religion and place of residence, exclusive of the desires of the mother.

During his own lifetime he may give it to some one else to bring up. After it is seven

years old he may send it away from the mother so long as it is not "beyond the seas."

He or his nominee may give consent to the child's marriage if it be twelve if a girl, or fourteen if a boy. The mother's consent is not necessary.

By a special provision the father though not twenty-one himself, may appoint a guardian for the child, to act solely during the father's lifetime or after the father's death, jointly with the mother.

Though the father be worthless or good-for-nothing, the mother may not appoint a guardian at all during his lifetime, nor, unless she is twenty-one, anyone to act after her own death. No special provision has been made to cover this latter point in her case though it would occur to most persons, that of the two she is the more likely to be under the stipulated age.

> The father's right to control the destiny of the child begins from the moment the child is begotten, so that, for instance, where the father dies before the birth of a child and appoints by his will a guardian with whom the mother must act, it is just as effectual for all purposes whatsoever as

if made after the birth of the child.—F. G. T. Lucas, Address to Pioneer Political Equality League.

If the father has not appointed a guardian to act after his death with the mother, or the guardian he nominates is dead or refuses to act, the Court may appoint the Official Guardian to act jointly with the mother. The Court has no power to appoint the Official Guardian to act with the father.—A. R. Creagh, to University Women's Club.

The Official Guardian is entitled to receive by way of commission 5% of the gross value of estates under his guardianship, and such commission is a first charge on the estate.

The mother may petition, and if the court sees fit, she may be granted the custody of the child until it is twenty-one; or instead of custody the court may grant her "right of access," viz., she may be permitted to visit it at stated intervals. (Of course, it may not be within visiting distance.)

If the health of the infant demand it, or other similar reason, a judge may order the infant to be committed to the mother's care and custody. This does not, however, entitle her to any direction over the tuition

or education of the child, or the management of the estate."—F. G. T. Lucas to Local Council of Women.

The Infants' Custody Act allowed the court to give the mother the custody of the child until it is seven years old. This Act, called in England "Sergeant Talfourd's Act," embodies the agony of one unhappy mother, the Hon. Mrs. Norton, daughter of Thomas Sheridan, whose sufferings over the death of her beloved child, snatched from her arms by a cruel and tyrannical husband, inspired her to write a pamphlet entitled "The Natural Claim of a Mother to the Custody of Her Children as Affected by the Common Law Right of the Father." The facts of her child's death, and the pathetic eloquence of her plea so roused England that the English mother obtained this one small natural right.

No mother against whom a single act of adultery has been proved is entitled to the custody of her child. This provision does not apply in the case of the father, however numerous his offences may be.

The Criminal Code, however, holds a "parent" responsible if the child lacks necessaries,

punishing neglect or refusal to provide the same by fine and imprisonment; the Deserted Wife's Act declares that she may not obtain maintenance orders against her husband for herself and the minor children if "she has sufficient means of her own"; and the Married Woman's Property Act sets forth the means she must pursue to secure the wages of her minor children for their own and her support, as against the claims of the husband and his creditors.

Apparently while she does not share with the father the guardianship of their child, she is not freed from all financial responsibility concerning it.

For the mother's responsibilities for the children's support, see laws under "Wife's Financial Position." Note clause in Criminal Code as to responsibilities of "parents'" limitation as to benefit of Deserted Wife's Act if she has means of her own, protection order for wages of minor children's wages in Married Women's Property Act in same chapter.

[*For Laws, see Appendix.*]

CHAPTER IV.

THE WIFE AND MOTHER'S SHARE IN THE ESTATE.

No one can make a valid will until twenty-one years of age.

If an unmarried son or daughter dies without a will the father inherits all the estate. The mother inherits nothing unless the estate came through her. If the estate has been acquired or consists of money earned by the son or daughter, the mother receives none of it if the father be living.

If a man or woman die without a will, leaving a widow or widower and a child or children, the child or children take two-thirds of the estate and the widow or widower one-third for life.

If there is no father who can inherit the estate of the unmarried intestate child, it is distributed in equal portions to the brothers and sisters or their descendants, and the mother, but while the former take their shares absolutely the mother has only a life interest in her

portion. She cannot give it away either before or at her death, and when she dies it reverts to the brothers and sisters.

The wife has no dower right, or any claim upon her husband's estate that he cannot alienate or dispose of by will.

If a man dies without a will and childless, the widow receives half the estate and the other half goes to her husband's relatives however remote in degree or however small the estate.

When the childless widow of an intestate divides her husband's estate with his father, it will be noted that the father takes his share absolutely, but if there is no father who can inherit, the mother's portion equals in amount only that of the deceased's brothers and sisters or their descendants.

Whenever the parents inherit from their child, the father takes his inheritance absolutely and may dispose of it as he pleases (unless it came through the mother; but when the mother inherits from their child she receives but a life interest. She only inherits absolutely when there is no father and no brothers and sisters or their descendants.

When a woman dies without a will leaving a husband and no other heirs the husband receives the whole estate. The husband of an intestate woman has a paramount right to administer her estate. No administrator is obliged to give an accounting of the intestate's estate except to creditors or heirs.

When a man dies intestate leaving a widow and no other heirs, she receives a "moiety" of her husband's estate, and the Crown is entitled to the other moiety. The next-of-kin have an equal right with the widow to administer the estate of her intestate husband.

While there is no statute in British Columbia definitely stating that the Crown is entitled to the other moiety of the estate of a childless intestate, when he leaves a widow and no other heirs the R. S. B. C. declare that in such case the widow shall be given one moiety. No statute of this province says what shall be done with the other moiety.

The Escheats Act, however, provides that property for which there is no heir shall escheat or pass to the Crown. Other Acts, such as the Crown Procedure Act, etc., give the Crown

power to recover, release, or enforce any claim upon such terms as the Lieutenant-Governor-in-Council may see fit.

Under the R. S. B. C. it will be seen that the husband of an intestate, if there be no other heirs, receives half his wife's estate as heir and the remainder as administrator, and no one but heirs or creditors may ask for an accounting. English law supports this disposition, also the title of the Crown to the other portion of the intestate husband's estate when there is a widow and no other heirs. Whenever our statutes are silent it will be remembered reference is taken to English law, as it was prior to November, 1858. (See "How British Columbia Gets Her Laws.")

The state of the law giving the Crown right to a moiety of the estate of an intestate leaving a widow and no other heirs cannot be defended on the presumption that no such cases arise.

The case of the widow in the Hamilton estate is a fairly recent one in point. R. B. Hamilton, a civic water-works employee, drowned in the Capilano in 1910, died intestate, leaving a widow. Though no other heirs could be found, their little home did not therefore

belong solely to Mrs. Hamilton. In taking out Letters of Administration, the widow was obliged to obtain an Order-in-Council before she could secure a conveyance for the portion to which the Crown was entitled.

This case Mr. J. S. Jamieson referred to in several of his addresses.

The widow and her children may be called upon to share the estate with the concubine and the illegitimate family. (See laws relating to "Wife's Financial Position" in Appendix.)

Under the Revised Statutes of British Columbia it will be seen that the husband of an intestate, if there be no other heirs, receives half of his deceased wife's estate as heir, and the remainder as administrator, and no one but creditors or heirs may ask for an accounting. English law supports this disposition, and also supports the title of the Crown to the other portion of the intestate husband's estate when there is a widow and no other heirs.

[*For Laws, see Appendix.*]

For much kindly criticism the compiler is deeply indebted to Mr. J. S. Jamieson (Wilson & Jamieson). Specially is this true of Chapters III. and IV.

CHAPTER V.

DOWER.

An eminent legal authority once remarked that in British Columbia the name Dower Act is a misnomer, as the Act so-called in the Provincial statutes is specially designed to do away with dower.

The last vestige of dower as understood in Ontario and some of the older Provinces, disappeared in British Columbia, January 26th, 1912. The widow can claim no dower from out of any land sold during her husband's lifetime. That is, her husband can sell any of his land without having to secure her signature (bar her dower).

Every other debt, interest and charge has preference before the widow's dower.

She cannot claim dower out of any land if the deed by which her husband purchased it declares that she shall not, or if in any deed executed by him it so says.

The widow may not claim dower if her husband dies partially intestate (i. e., his will does

not cover his whole estate) if in his will he declares in willing some of his land that she shall not have dower out of such land.

Her husband can restrict or condition or direct as to dower.

Finally, she cannot claim dower at all unless her husband in his will declares she is to have it.

Dower is, of course, only a life interest in real estate. The widow is not the owner of the third she takes by dower. She can give only a twenty-one year lease under dower.

> Bound up with dower is the corresponding right given the husband called "curtesy." But while dower, when it exists, gives the widow a life interest in one-third her deceased husband's real estate, curtesy gives the widower a life interest in the whole of his wife's estate.—Alex. Henderson, K.C., to Women's Canadian Club.

By the Dower Act a husband is empowered by will to deprive his widow of all and every claim upon his real estate.

[*For Laws, see Appendix.*]

CHAPTER VI.

THE WIFE'S FINANCIAL POSITION.

Under the Married Woman's Separate Property Act the wife has entire control of her separate property, and can sue and be sued, and carry on business in her own name.

There being no Dower Act, as understood in some of the older provinces, in British Columbia, the home may be sold, mortgaged, or otherwise disposed of without the wife's consent, her signature, or even her knowledge. The husband may, by will, leave her penniless.

If she has sufficient means to support herself and her children, she cannot sue the deserting husband and father for maintenance for herself and the minor children. But the law apparently still holds him guardian of the children, for any married woman whose husband is in jail or whose husband is a drunkard or profligate, or whose husband has deserted her, or whose husband has never been in this province, must get protection orders before she can secure the earnings of her minor children

for the support of herself or her children; otherwise the husband and the husband's creditors may collect them. This order must not only be secured, but filed, and the husband or his creditors may appeal to have it set aside.

Putting together the section of the Criminal Code which makes a "parent" criminally responsible for not providing for children under sixteen, and that section of the Deserted Wife's Act which declares that she cannot sue for her own or her children's support if she has sufficient means of her own, and the section of the Married Woman's Property Act which instructs her how to obtain her children's wages, it will be seen that though the father is the sole guardian during his lifetime and has the custody of the child and the right to direct its education, religion, and place of residence, nevertheless the mother also is held responsible for the child's maintenance. This point is clearly brought out in the quotation from Mr. Lucas' address, to be found in the chapter on "Guardianship."

It may be noted that the widow and her children may be called upon to divide their

portion with the concubine and her family. The Revised Statutes of British Columbia empower the court, upon petition of the concubine of a man dying without a will, to allot to her and the offspring a certain portion of the estate.

Mr. F. G. T. Lucas pointed out in his address several interesting points.

> Marriage does not now nor never has given a wife any right to the husband's real or personal property in his lifetime.
>
> The husband, as head of the household, is under obligation to support and maintain his wife and family. This obligation is more moral than legal.
>
> There has never been and there is not now any legal obligation on the part of the father to maintain his wife and children unless neglect to do so should bring the case within the Criminal Law. No right of action lies in the civil court on the part of the wife and children to compel the father to maintain them.
>
> Under the Criminal Code, however, everyone who is a parent, guardian or head of the family, who fails to provide necessaries for any children under sixteen years of age

without lawful excuse, is liable to fine or imprisonment, or both, for refusal or neglect to do so, and the same responsibility applies to the wife.

The husband is liable for necessaries supplied where he neglects to supply them. If there be no necessity for them, and the tradesman takes no pains to discover whether there is necessity or not, then unless he can prove assent of the husband to the contracting of the bill, he cannot make him pay.

Mr. Lucas further remarked:

It is the policy of the law, however, to assume that it is the husband's intention to clothe his wife with sufficient authority to purchase necessaries for herself and family. It, therefore, does not require much evidence of authority given to enable tradesmen to sue the husband for necessaries supplied the wife.

The wife's right to pledge her husband's credit suffers from two series drawbacks: First, he may have none, and one cannot compel any merchant to give credit; and, second, it provides no ready money for her daily expenses.

[*For Laws, see Appendix.*]

CHAPTER VII.

DIVORCE.

By an Act coming down from Crown Colony days there is in British Columbia jurisdiction to grant divorces.

The Act was not of Provincial origin. It was a verbatim clipping from the British Statute book. It referred to courts, officials, and procedure unprovided for in British Columbia.

Some of our judges held that the Act itself had not established a local Court of Divorce and Matrimony Causes and that without such a Court no cases could be tried. Other judges contended that the Supreme Court of the Province had power to give effect to its provisions. So in the same Court judges were found who would grant divorces while others refused to take divorce trials.

This confusion prevailed until 10th of November, 1907, when Mr. Justice Clement interrupted the trial in Watt vs. Watt by raising the question of jurisdiction. This was finally

settled in an appeal to the Privy Council of England by whose decree 30th July, 1908, divorces granted by the Supreme Court of this Province were held to be valid.

This Act entitles a husband to divorce for a single act of adultery on his wife's part. The wife may not obtain a divorce for adultery alone, however numerous the husband's offences may be. This despite the light medical research throws upon the awful danger of infection and consequent suffering that may be inflicted upon the innocent wife, and upon children "to the third and fourth generation."

When this English Act was passed in 1857, Mr. William Gladstone spoke twenty-nine times in a ten-hour debate in eloquent protest against a clause so immoral and so unjust. The opinions expressed during this debate by otherwise reputable men are revelations to women as to the views on moral questions often held by apparently respectable men.

[*For Laws, see Appendix.*]

CHAPTER VIII.

RURAL SCHOOL TRUSTEES.

By an amendment to the Public School Act passed 1st March, 1913, women were disqualified from acting as School Trustees in rural school districts.

CHAPTER IX.

SUPPORT OF AGED AND INDIGENT OR INFIRM RELATIVES.

British Columbia has no law requiring grown children or grand-children to support aged, infirm or indigent parents or grand-parents.

CHAPTER X.

DOMESTIC LEGISLATION IN BRITISH COLUMBIA.

Domestic legislation can scarcely be called modern or reasonable that:

1st—Permits the marriage of children of twelve and fourteen;

2nd—Frees the deserting husband and father from obligation to provide for his wife and family if his wife has sufficient means

to support them, yet leaves him guardian of the children with right to their earnings for his or his creditors' benefit (unless a court order is obtained giving them to the deserted wife and mother for their support);

3rd—Gives the man a right to divorce his wife for a single act of adultery, yet refuses the wife a divorce however adulterous her husband may be. (The mother against whom adultery is proved is not entitled to the custody of her children.);

4th—Divides the estate, however small, of the childless widow of a man dying intestate with her husband's relatives, however distant. If there are absolutely none, gives the Crown a right to the other moiety;

5th—Provides no claim upon the family home that the husband may not alienate.

6th—Permits the husband to leave his widow penniless and dependent;

7th—Makes a stipulated provision for the concubine of a man, married or otherwise, dying intestate.

CHAPTER XI.

BETTER LAWS.

Lest doubt arises as to the possibility of securing more just and equitable laws for women,

it may be well to point out that in *New Zealand, *Colorado and *Washington State, mothers have been placed on an equality with the fathers both as to guardianship and responsibility, and in the latter State as to inheritance also. The child is not regarded as belonging exclusively to the father.

In New Zealand, the Family Testator's Act allows the court to cancel the provisions of the will of either a husband and father or wife and mother in so far as it does not make proper provision for the survivors.

The Destitute Persons' Act makes children, or grand-children, or brothers and sisters, responsible in so far as they are able, for the support of aged or infirm or indigent relatives.

The Maintenance Act provides not only that the wife can sue the husband for support, but may do so without leaving him, and a destitute husband may sue a well-to-do wife. (It is not to be presumed that the court would regard an able-bodied man or woman capable of working for a living as "destitute" in the sense of the Act.)

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* It is noticeable that in all these places women have the franchise.

The conditions upon which divorce may be secured are equal for husband and wife.

In Washington State any person who is head of a family (husband or wife) may select a homestead to be the family dwelling, but the value may not exceed $2,000. The wife may select after her husband's death, if he has failed to do so, and before a sale, to pay debts.

If the husband or wife dies without a will, leaving separate estates, it is allotted as follows:

If there is a widow, or widower, and one child, it is divided equally; if more, the surviving spouse takes one-third and the children two-thirds. Father and mother inherit equally from an intestate, and in the case of a widow without children, she takes two-thirds and the other third is given her husband's immediate family, including only father and mother or brothers and sisters or their children. She does not divide with her husband's relatives to "the remotest degree of consanguinity." If there are none of these, she takes the whole; "the other moiety" does not belong to the State.

The Destitute Mothers' Pension Act provides that the county shall grant a woman

whose husband has deserted her, or is in prison, insane or dead, $15.00 a month when she has one child, and five dollars for each other child under fifteen years of age, if by such means she is enabled to maintain a home for herself and for them.

Colorado has an equal guardianship law, the age of consent is eighteen, the wife's signature is necessary before the home may be mortgaged, and aged and infirm parents must be supported.

The fact that other countries and states have such laws is evidence that the women of British Columbia, in asking for just and reasonable recognition of their relationship and human right to share equally with the father and husband in the guardianship and aught else regarding the children they have brought into the world, are making no extraordinary and unheard-of demand.

While the claims of the wife and mother are being acknowledged but slowly, yet in an increasing number of persons a keener sense of justice is growing up, and that way lies our hope.

APPENDIX.

CHAPTER II.

MARRIAGE ACT.

LAWS.

Revised Statutes of British Columbia, 1911, Chapter 151, Sec. 25.

In all matters relating to the mode of celebrating marriages, or the validity thereof, and the qualification of parties about to marry, and the consent of guardians or parents, or any person whose consent is necessary to the validity of such marriage, the law of England shall prevail, subject always to the provisions of the Act.

Halsbury's Laws of England, Vol. 16. (Highways to Income Tax.) Husband and Wife. Part 2, Sec. 2, Who May Marry; Page 281, Sub-Sec. 1, Capacity to Marry.

518. The age at which a person is capable of giving the necessary consent, and therefore of marrying, is fourteen in the case of males and twelve in the case of females.

Halsbury's Laws of England, Vol. 17. (Industrial to Inter-pleader.) Infants and Children. Part 2, Sec. 4, Sub-Sec. 3, Marriage, Page 57.

156. A binding marriage can be contracted by an infant of the male sex at the age of fourteen years, and by an infant of the female sex at the age of twelve years. A marriage by an infant of more tender years is not void, but is voidable by the infant upon attaining the age for contracting a binding marriage.

CHAPTER III.

GUARDIANSHIP OF CHILDREN

LAWS.

INFANTS UNDER SPECIAL PROTECTION OF THE SOVEREIGN.

Halsbury's Laws of England, Part 2, Sec. 1, Page 46.

Infants have always been treated as specially under the protection of the King, who, as "parens patriae," had charge of persons not capable of looking after themselves.

This jurisdiction over infants was formerly delegated to and exercised by the Lord Chancellor; through him it passed to

the Court of Chancery, and is now vested in the Chancery Division of the High Court of Justice. It is independent of the question whether the infants have property or not.

GUARDIANS IN SOCAGE.

R. S. B. C., 1913, Infants' Act, Amendment, Sec. 4.

Where a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property, with the rights, powers and duties of a guardian in socage, belongs—

(a) To the father.

(b) If there be no father, to the mother.

(c) If there be no father or mother, to the official guardian.

Sec. 4. Where no guardian has been appointed by the father, or if the guardian appointed by the father is dead or refuses to act, the Supreme Court, or any judge thereof, may appoint the official guardian to act jointly with the mother.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this Act.

INFANTS' ACT.

Appointment of Guardians.

Sec. 5. (1) The father of an infant may, by instrument executed in the presence of two witnesses, appoint a guardian of such infant until the infant reaches the age of twenty-one years, or marries, or for any shorter period, and such father may make such appointment though not himself of the age of twenty-one.

Sec. 5, s.-s. 3. On the death of the father of an infant, the mother, if surviving, shall be the guardian of an infant, either alone, when no guardian has been appointed, or jointly with any guardian appointed by the father.

INFANTS' ACT, AMENDMENT ACT.

Sec. 5. The mother of an infant may, by an instrument in writing executed in the presence of two witnesses, provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the infant; and the Supreme Court, or any judge thereof, after her death, if it be shown that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians.

OFFICIAL GUARDIANS' ACT.

Chap. 97, Sec. 16.

All moneys received by the official guardian in his official capacity as guardian "ad litem," and all costs paid to the official guardian by any party, and all commissions received by him, shall be by the official guardian paid forthwith to the Minister of Finance and Agriculture, and shall be placed to the credit of an account to be entitled "Account of Official Guardian." He shall receive by way of commission five per centum of the gross value of every estate under his guardianship, and such commission shall be a first charge on the estate.

CUSTODY OF INFANTS.

An Act to Consolidate and Amend the Law Relating to Infants. R. S. B. C., 1913.

9. (1,) The Supreme Court or a Judge thereof, upon the application of the mother of any infant (who may so apply without next friend), may order—

(a) That the petitioner shall have access to such infant at such time and subject to such regulations as the Court or Judge deems proper; or,

(b) That such infant shall be delivered to the mother and remain in or under her custody or under her control, or shall, if already in her custody or under her control, remain therein until such infant attains majority or such age as the Court or Judge directs, and that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant, and otherwise, as the said Court or Judge deems proper.

(2.) The Supreme Court or a Judge may afterwards alter, vary, or discharge such order on the

application of either parent (in which case the mother may apply or oppose the application without next friend), or, after the death of either parent, on the application of the guardian of any such infant; and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs, as the Court or a Judge thinks just.

(3.) In making such order the Court or Judge shall have regard to the welfare of such infant, and to the conduct or circumstances of the parents, and to the wishes as well of the mother as of the father.

> Sec. 10. No order shall be made by virtue of the last preceding section of this Act whereby any mother against whom adultery shall be established by judgment in any action in the Supreme Court in divorce and matrimonial causes, at the suit of her husband, shall have the custody of any infant or access to any infant, unless for special reasons the court or a judge shall otherwise direct.

CHAPTER IV.

THE WIFE AND MOTHER'S SHARE IN THE ESTATE.

Inheritance and Administration.

LAWS.

WILLS.

R. S. B. C., 1911, Chap. 241, Sec. 5.

No will made by any person under the age of twenty-one years shall be valid.

COURSE OF DESCENT.

Inheritance Act, R. S. B. C., Chap. 108, Sec. 5.

Whenever any person shall die seised in fee simple, or for the life of another, of any real estate, without having lawfully devised the same, such real estate shall descend or pass by way of succession in the manner following, that is to say:

(1) To his lineal descendants and to those claiming by or under them per stirpes*.

(2) To his father.

(3) To his mother.

(4) To his collateral relatives.

Wherever in this Act the expression "Where the estate shall have come to the intestate on the part of the father or the mother," as the case may be, or expressions to the like effect are used, the same shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to or from any relative of the blood of such parent.

Subject in all cases to the rules and regulations hereinafter prescribed.

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* PER STIRPES.—According to steps or equally; for example, all his children inherit equal portions, then perhaps all nieces and nephews not equally with children, but equally with each other.

(5) Provided, however, that if the intestate shall leave a widow or husband, him or her surviving, such widow or husband, as the case may be, shall be entitled in case the intestate has left no lawful descendants, to one-half of such real estate absolutely, and in case the intestate has left lawful descendants, him or her surviving, then to one-third of such real estate for life.

(6) If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate in common degree of consanguinity may be.

(9) In case the intestate died without lawful descendants and leaving a father, then the inheritance shall go to such father, unless the inheritance come to the intestate on the part of his mother and such mother be living, and if such mother be dead the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants according to the law of inheritance by collateral relatives hereinafter provided; and if there be no such brothers and sisters or their descendants living, such inheritance shall descend to the father.

(10) If the intestate die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last

preceding section, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother or sister of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided; and if the intestate in such cases leaves no brother or sister, nor any descendant of any brother or sister, the inheritance shall descend to the mother.

(11) If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several of such relatives, all of the equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be.

(19) On failure of heirs under the preceding rules, the inheritance shall descend to the remaining next-of-kin of the intestate, according to the provisions made by the Statute for the Distribution of the Personal Estates of any Person Dying Intestate.

(20) Whenever there shall be but one person entitled to inherit according to the provisions of

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For widow's disability to inherit as next-of-kin, see Halsbury's Laws of England, Vol. 77, page 15, quoted further on.

the fifth and following sections of this Act, he shall take and hold the inheritance solely.

DISTRIBUTION OF INTESTATES' ESTATES.

Administration Act, Part 4, Chap. 4, Sec. 95, Page 56.

Every court or judge or other person who by this Act is enabled to make distribution of the surplusage of the estate of any person dying intestate shall distribute the whole surplusage of such estate in manner following, that is to say:

(1) One-third of the surplusage to the wife of the intestate, and all the residue by equal portions among the children of such person dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is made.

(3) If there be no children of the intestate, or legal representatives of them, then one moiety of the surplusage shall be allotted to the wife of the intestate, and the remainder thereof shall be distributed equally to every of the next-of-kin of the intestate who are in equal degree and those who legally represent them.

(4) If after the death of a father, any of his children shall die intestate without wife or children in the lifetime of the mother, every brother and sister, or the representative of them, shall have an equal share with her.

PART 4.—DISTRIBUTION OF PERSONAL ESTATE.

Halsbury's Laws of England, Vol. 11, Page 16.

33. Rule 1. If a woman dies intestate, leaving a husband, the whole of her estate goes to him. (Judicial separation, it goes as if he were dead.)

34. Rule 2. If a man dies intestate, leaving a widow and issue, the widow is entitled to one-third of the estate, and if he leaves a widow and no issue, she is entitled to one moiety.

35. Rule 3. If the intestate leaves a widow but no next-of-kin and the estate is over £500* in value, the widow takes, it is submitted, the first £500 and one moiety of the residue, and the other moiety goes to the Crown; but a widow is not entitled to take as one of the next-of-kin under a trust in a deed "For the Next-of-Kin," according to the Statutes for the Distribution of the Personal Estate of Persons Dying Intestate.

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* British Columbia being tied to English law of 1858, and this exemption having been enacted in England only in 1890, does not apply to this province.

SEC. 5.—GENERAL GRANT OF ADMINISTRATION.

Halsbury's Laws of England, Vol. 14, Sub-Sec. 1, In General. Executors and Administrators, Page 182

385. Where a person dies intestate, representation to his estates is obtained by means of a grant of letters of administration, etc.

387. There are certain persons recognized by law as being entitled to administer in priority to others.

388. The widower has a paramount title to administer his wife's personal estate (except there is a divorce, separation, etc.).

THE WIDOW AND NEXT-OF-KIN.

Sub-Section 2.

390. The widow and next-of-kin have an equal right to administer, the court having a discretion to make a grant to either or both, and in case of several next-of-kin, having a further discretion to accept any one or more of them. In practice the grant is made to the widow, unless sufficient cause is shown to the contrary.

ACCOUNTS.

R. S. B. C., Administration Act, 1911, Chap. 4, Sec. 85.

No administrator shall be cited to render an account of the personal estate of his intestate (otherwise than by an inventory or inventories thereof), unless it be at the instance of some

person acting on behalf of a minor, or having a demand out of such personal estate, as a creditor or next-of-kin.

AN ACT RESPECTING ESCHEATS AND FORFEITURES.

R. S. B. C., 1911, Chap. 76, Sec. 2.

Where land, tenements or hereditaments situate in this province have escheated to the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs, or have become forfeited for any cause except crime, the Attorney-General may cause possession of the lands, tenements or hereditaments to be taken in the name of the Crown or in case possession is withheld, he may cause an action to be brought for the recovery thereof, without any inquisition being first necessary. 1898, c. 21, s. 2.

Sec. 6. Where a forfeiture takes place of any lands, tenements or hereditaments, or any interest therein as aforesaid, the Lieutenant-Governor in Council may waive or release any right which the Crown may thereby have become entitled to, so as, by the waiver or release to vest the property, either absolutely or otherwise, in the persons who would have been entitled thereto but for the forfeiture; and the waiver or release may be either for valuable consideration or otherwise, and may be upon such terms and conditions as the Lieutenant-Governor in Council may see fit. 1898, c. 21, s. 6.

Sec. 7. The Lieutenant-Governor in Council may make an assignment of personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other person entitled to succeed thereto or by reason of the same having become forfeited to the Crown for any cause except crime, or may take an assignment of any portion of such personal property for the purpose of transferring or restoring the same to any person or persons having a legal or moral claim upon the person to whom the same had belonged, or for carrying into effect any disposition thereof which such person may have contemplated, or of rewarding the person making discovery of the right of the Crown to such property as to the Lieutenant-Governor in Council may seem fit.

Halsbury's Laws of England, Vol. 14, 403, Page 187.

The real estate of a person who dies intestate and without an heir, escheats to the Crown.

CROWN ACTIONS.

Crown Procedure Act, R. S. B. C., 1911, Chap. 63, Sec. 19.

The procedure and forms which are and may from time to time be in force for the prosecution of rights, claims or demands, or for the recovery of the possession of any lands, deeds or personal property between subject and subject, may be used in the like cases for the prosecution of rights, claims or demands which His Majesty

may have against any person or body corporate, or for the recovery of the possession of any lands, deeds or personal property whereto His Majesty claims to be entitled.

CHAPTER V.

DOWER.

Dower, R. S. B. C., 1911, Chap. 68, Page 783.

Sec. 5. No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by will.

Sec. 6. All partial estates and interests and all charges created by any disposition or will of a husband, and all debts, encumbrances, contracts and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

Sec. 7. A widow shall not be entitled to dower out of any lands of her husband when, in the deed by which such land was conveyed to him, or by any deed executed to him, it shall be declared that his widow shall not be entitled to dower out of such land.

Sec. 8. A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention

that she shall not be entitled to dower out of such land or out of any of his land.

Sec. 9. The right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband, duly executed as aforesaid.

Sec. 10. Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband unless a contrary intention shall be declared by his will.

R. S. B. C., 1912, Chapter 12, Section 2.

Sec. 2. Nothing in this Act contained shall be held to impair or affect the right of a widow of an intestate to her dower out of her deceased husband's lands, or the right of a husband to his curtesy out of deceased wife's lands.

Settled Estates, R. S. B. C., 1911, Chap. 208, Sec. 48, Page 2615.

It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for any life or for a term of years determinable with any life or lives, or for any greater estate, either in his own right, unless the settlement shall contain an express declaration that it shall not be

lawful for such person to make such devise, and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by courtesy, or in dower, without any application to the court, to demise the same or any part thereof from time to time for any term not exceeding twenty-one years, to take effect in possession at or within one year next after the making thereof; Provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit; and also a condition of re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf; and provided a counterpart of every deed of lease be executed by the lessee.

CHAPTER VI.

THE WIFE'S FINANCIAL POSITION.

LAWS.

LIMITATION.

Deserted Wives' Maintenance Act, Chap. 61, Page 3, R. S. B. C., 1911, Sec. 3.

No wife shall be entitled to the benefit of this Act:

(a) Who is possessed in her own right of separate property sufficient for the comfortable maintenance of herself and of the infant children (if any).

PROCEDURE.

Sec. 5. The magistrate, if satisfied on the evidence that the wife has been deserted within the meaning of this Act, may order that the husband pay to such wife for her maintenance and the maintenance of their infant children, if any, such weekly sum not exceeding twenty dollars, as the magistrate may consider to be in accordance with the means of the husband and any means the wife may have.

Sec. 6. The magistrate or justice by whom an order for payment was made, or any other magistrate or justice sitting in his or their stead at his or their request, shall have power from time to time to vary the order on the application of

either the husband or wife upon proof that the means of the husband and wife have been altered in amount since the making of the original order or any subsequent order varying it.

Criminal Code of Canada, 1913, Chap. 13, Sec. 242a.

Everyone is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to one year's imprisonment, or to both, who—

(a) as a husband or head of a family is under a legal duty to provide necessaries for his wife or any child under sixteen years of age; and who, if such wife or child is in destitute or necessitous circumstances, without lawful excuse, neglects or refuses to provide such necessaries.

PROTECTION ORDERS.

Married Woman's Property Act, R. S. B. C., 1911, Chap. 152, Sec. 24.

Any married woman having a decree for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him, and renders him liable for her support; or any married woman whose husband is undergoing sentence of imprisonment in the provincial penitentiary or in any goal for a criminal offence, or

any married woman whose husband, from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this province, or any woman who is deserted or abandoned by her husband, may obtain an order of protection entitling her, notwithstanding her coverture to have and to hold and to enjoy all the earnings of her minor children, and any acquisitions thereof, free from the debts and obligations of her husband and from his control or disposition.

Sec. 25. The married woman may at any time apply, or the husband or the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection.

Sec. 28. The order for protection shall have no effect until it is registered or filed.

CONTRACT FOR NECESSARIES.

Halsbury's Laws of England, Vol. 16, Highways to Income Tax, Husband and Wife, Part 7, Contracts of Wife During Coverture, Page 414, 838, Sec. 1.

If, on the other hand, a wife while living with her husband, orders necessaries with his authority and nothing is said by her, and no enquiries are made by the tradesman as to whether she is contracting on her husband's behalf or her own, she will be taken to have contracted as the agent

of her husband, and the tradesman as having given credit to him, even though he did not know that she was a married woman.

Sub-Sec. 2. 852. Where the husband and wife are living together, the wife is presumed to have her husband's authority to pledge his credit for necessaries suitable to their style of living.

(See also Montague vs. Bennett, 473 Smith's Leading Cases.)

PROVISION OF ILLEGITIMATE FAMILY.

Administration Act, Part 5, Page 91, Chap. 4, R. S. B. C., 1911.

Where any intestate shall leave him surviving in this province a concubine at the time of his death actually maintained by him or under his protection, or shall leave him surviving any illegitimate children under the age of sixteen years, reputed to be by him begotten of any woman, and at the time of his death maintained by him or under his protection, or for the support, maintenance or advancement of which child he shall have made any provision within the twelve months next before his decease, it shall be lawful for the court to order that there be retained, allotted and applied for the support, maintenance and benefit of such concubine and of every such child, respectively, so much of the net real and personal estate, or either of them, of such intestate (after payment of all his

debts) as to the court shall seem fit; not, however, retaining, allotting and applying for such concubine or for any such child a greater sum for each than five hundred dollars, or in the whole than the amount of ten per cent. on the net real and personal estate of the intestate within the province, whichever limit may be the largest.

93. If such intestate leave him surviving a widow or legitimate children, no order shall be made for payment of allowance out of the intestate's estate upon any application under Sec. 91 of this Act until notice thereof shall have been given to such widow or the guardian or next friend shall have had an opportunity of being heard thereon.

CHAPTER VII

DIVORCE.

LAWS.

Act to Amend the Law Relating to Divorce and Matrimonial Causes in England, Chap. 67, Sec. 12, R. S. B. C., 1911.

It shall be lawful for any husband to present a petition to the said court, praying that his marriage may be dissolved, on the ground that

his wife has since the celebration thereof been guilty of adultery; and it shall be lawful for any wife to present a petition to the said court, praying that her marriage may be dissolved, on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce "a mensa et thoro" (bed and board, Ed), or of adultery coupled with desertion, without reasonable excuse, for two years or upwards, and every such petition shall state as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded; provided that for the purposes of this Act incestuous adultery shall be taken to mean adultery committed by a husband with a woman with whom if his wife were dead he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity; and bigamy shall be taken to mean marriage of any person being married to any other person during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

CHAPTER VIII

RURAL SCHOOL TRUSTEES.

LAWS.

An Act to Further Amend Public School Acts. 1st March, 1913. R. S. B. C., 1911, Chap. 206.

Section 31 of said Chapter 206 is hereby repealed and the following is substituted:

S-S. (2) In district municipalities' school districts, any person being a male British subject, and having been for the three months next preceding the day of his nomination the registered owner, in the Land Registry Office, of land or real property situate within the municipality of the assessed value on the last municipal or provincial assessment roll, of two hundred and fifty dollars or more over and above any registered judgment or charge, or being a homesteader, lessee from the Crown, or pre-emptor who has resided within the municipality for the space of one year or more immediately preceding the day of nomination, and is assessed for five hundred dollars or more on the last municipal or provincial assessment roll over and above any registered judgment or charge; or being a homesteader, lessee from the Crown, or pre-emptor who

has resided within the municipality for a period of one year immediately preceding the nomination, and during the remainder of said year has been the owner of said land, of which he was formerly a homesteader, lessee from the Crown or pre-emptor, and is assessed for five hundred dollars or more on the last municipal or provincial assessment roll over and above any registered judgment or charge, and being otherwise qualified by this Act to vote at an election of school trustees in the said school district, shall be eligible to be elected or to serve as a school trustee in such district municipality school district.

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