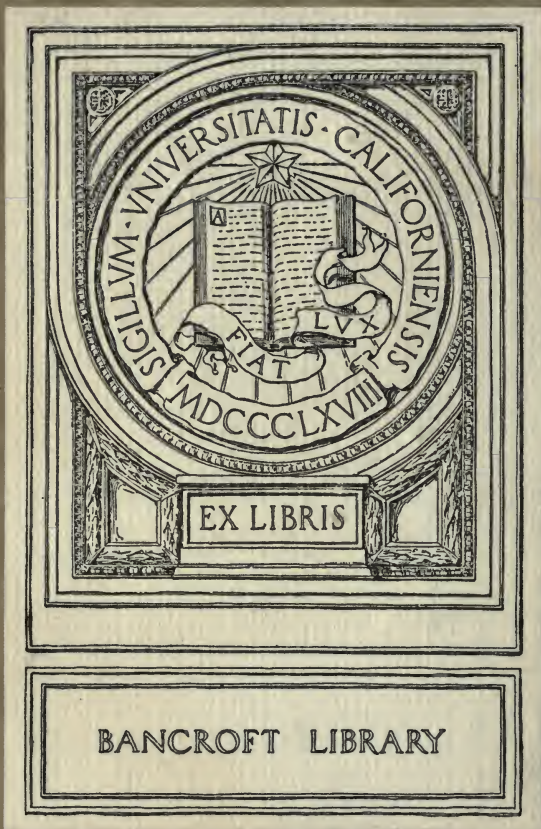


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LAWS OF CALIFORNIA

RELATING TO

WOMEN AND CHILDREN

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Laws of California

Relating to

Women and Children

Offered to the State of California by
MRS. WILLOUGHBY RODMAN

Chairman of Civics
Los Angeles District

California Federation of Women's Clubs

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PART ONE

Laws Relating to Women

By Willoughby Rodman

TITLE ONE—PERSONAL RELATIONS

Chapter 1. As to Husband.

Chapter 2. As to Children.

CHAPTER I.—AS TO HUSBAND

Marriage.

Following the common law of England, the law of California regards marriage as a purely civil contract.

The Civil Code of California defines marriage as follows:

“Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making the contract is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties or obligations.” Civil Code, Sec. 55.

Elements of Contract.

The essential elements of contract are—

1. Parties capable of contracting.
2. Their consent.
3. A lawful object.
4. A cause or consideration. Civil Code, Sec. 1550.

Hence, to constitute a valid marriage, two competent parties must freely consent to marry each other.

Parties.

Who may contract marriage.

“Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.” Civil Code, Sec. 56.

Blood Relatives Incompetent to Intermarry.

“Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces or aunts and nephews, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.” Civil Code, Sec. 59.

Marriage of White Person with Negro or Mulatto, Void.

“All marriages of white persons with negroes, mongolians or mulattoes are illegal and void.” Civil Code, Sec. 60.

Marriage Void if Contracted During Life of Spouse.

A married person cannot contract a marriage with another person during the life of his or her spouse, unless

“1. The former marriage has been annulled or dissolved;

“2. Such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or is generally reputed, believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.” Civil Code, Sec. 61.

Divorced Person Cannot Marry Within One Year.

A divorced person cannot marry until after the expiration of one year from the entry of an interlocutory decree, unless his or her spouse shall have died during that year. (Civil Code, Sec. 61. Sub. Sec. 2, Secs. 131, 132.)

As to interlocutory decree, see p. 23, post.

Validity of Marriages Contracted Outside State.

“All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, are valid in this State.” Civil Code, Sec. 63.

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Consent.

As in any contract, free consent is essential to the validity of a marriage contract.

Consent to a marriage contract is not free if obtained through—

Fraud or Force. (Civil Code, Secs. 58 and 82, Sub Secs. 4 and 5.)

Fraud may be defined as, any act committed by a party to a contract, or with his connivance, with intent to deceive another party to the contract, or to induce him to enter into the contract. (Civil Code, Sec. 1572.)

Force is not specifically defined by the statutes of California, but the interpretation usually employed may be found in Section 1569 of the Civil Code, under the head of "Duress," which, as to marriage contracts, is defined as, Unlawful confinement of the person of the party, or of an ancestor, descendant or adopted child of such party; or unlawful detention of the property of any such person; or confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harrassing or oppressive.

Object.

The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do. (Civil Code, Sec. 1595.)

In a contract to marry, the object is the marriage.

Consideration.

Mutual promises to marry constitute sufficient consideration to support the contract.

Performance.

A contract to marry is performed by marriage.

Breach of Contract.

The law will not enforce specific performance of a contract to marry; that is, if a person promise to marry another, and fail to keep the promise, the law will not compel him to marry.

But for the breach of such promise, the other party may recover all damages caused by the failure of the offending party to comply with his promise.

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The amount to be paid as damages rests in the sound discretion of a jury. (Civil Code, Sec. 3319.)

The elements of damage, that is, the matters which may be considered in estimating the amount of loss caused by failure to perform a promise of marriage, are stated as follows:

“But the jury are not to be confined to mere pecuniary or worldly considerations. It is their duty to take into consideration the injury to the plaintiff’s feelings, affections, and wounded pride, and the pain and mortification resulting from the breach of the contract; *Reed v. Clark*, 47 Cal. 194; *Royal v. Smith*, 40 Iowa, 615; *Coolidge v. Neat*, 129 Mass. 146; *Bennett v. Beam*, 42 Mich. 346; *Goodull v. Thurman*, 1 Head, 209; *Vanderpool v. Richardson*, 17 N. W. Rep. 936. The plaintiff is entitled to recover “not merely an indemnity for her pecuniary loss and the disappointment of her reasonable expectations of material and worldly advantages, resulting from the intended marriage, but also a compensation for wounded feelings and the mortification and pain which she had wrongfully been made to undergo, and for the harm they had been to her prospects in life;” *Grant v. Willey*, 101 Mass. 356. The length of time during which the engagement continued may also be taken into account in awarding the damages. For this may be a very material fact in determining the effect of the breach upon the plaintiff’s conditions and prospects; *Lawrence v. Cooke*, 56 Me. 187; *Grant v. Willey*, 101 Mass. 356; *Coolidge v. Neat*, 129 Id. 146; *Vanderpool v. Richardson*, 17 N. W. Rep. 936. The plaintiff may prove her conduct and apparent distress on hearing of the defendant’s marriage to another; *King v. Kersey*, 2 Ind. 402. And evidence that the defendant borrowed money of the plaintiff shortly before marrying another is competent, and may be considered by the jury in fixing the damages; *Simmons v. Simmons*, 8 Mich. 318. The damages are in the sound discretion of the jury, under the circumstances surrounding the case, and upon the facts proved; *Goodull v. Thurman*, 1 Head 209. But the damages must be alleged and proved, otherwise but nominal damages can be proved, if objection be made at the proper time; *Glasscock v. Shell*, 57 Tex. 215. And the plaintiff’s loss of health, if not alleged, is not a direct and

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proximate result of the breach, and is not admissible on the question of damages; *Bedell v. Powell*, 13 Barb. 183." Quotation from monographic note at page 532, vol. 63, American Decisions, to which the reader is referred for a resume of the law relating to actions for breach of promise.

Authentication of Marriage.

As stated above, consent alone will not constitute marriage.

Marriage must be followed by a solemnization as authorized by the Civil Code.

Civil Code, Sec. 68, provides: "Marriage must be licensed, solemnized, authenticated and recorded as provided in this article;—'the article' referred to comprises section 68-79 a, Civil Code.

Article 68 continues: "but non-compliance with its provisions by others than a party to the marriage, does not invalidate it."

Thus the steps essential to a regular marriage are—1. License; 2. Solemnization; 3. Authentication; 4. Recording.

License.

"All persons about to be joined in marriage must first obtain a license therefor from the county clerk of the county in which the marriage is to be celebrated, showing:

1. The identity of the parties;
2. Their real and full names, and places of residence;
3. Their ages;
4. If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such non-aged person has been previously, but is not at the time, married.

For the purpose of ascertaining these facts, the clerk is authorized to examine parties and witnesses on oath, and to receive affidavits and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the clerk unless the consent, in writing, of the parents of the person under age, or of one of such parents, or of his or her guardian, or of one having charge of such person, be pre-

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mented to him; and such consent shall be filed by the clerk; provided, that the said clerk shall not issue a license authorizing the marriage of a white person with a negro, mulatto, or Mongolian." Civil Code, Sec. 69.

Marriage Without License.

"When unmarried persons, not minors, having been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage, must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made." Civil Code, Sec. 79.

Solemnization.

"Marriage may be solemnized by either a justice of the supreme court, judge of the superior court, justice of the peace, priest, or minister of the gospel of any denomination." Civil Code, Sec. 70.

"No particular form for the ceremony of marriage is required, but the parties must declare in the presence of the person solemnizing the marriage, that they take each other as husband and wife." Civil Code, Sec. 71.

"The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license." Civil Code, Sec. 72.

"The provisions of this chapter, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in section seventy-six, and be acknowledged and recorded, as provided in section seventy-seven." Civil Code, Sec. 79a.

Authentication.

"The person solemnizing a marriage must make, sign, and endorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and

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2. The names and places of residence of one or more witnesses to the ceremony." Civil Code, Sec. 73.

"If either party to any marriage denies the same, or refuses to join in the declaration thereof, the other may proceed by action in the superior court, to have the validity of the marriage determined and declared." Civil Code, Sec. 78.

Recording.

"He must, at the request of and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage." Civil Code, Sec. 74.

"If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages and residences of the parties;
 2. The fact of marriage.
 3. That no record of such marriage is known to exist.
- Such declaration must be subscribed by the parties and attested by at least three witnesses." Civil Code, Sec. 76.

"Declarations of marriage must be acknowledged and recorded in like manner as grants of real property." Civil Code, Sec. 77.

Section 79a provides as follows:

"Where a marriage is declared as provided in said section seventy-six, the husband must file said declaration with the county recorder within thirty days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages who fails to make the return of such solemnization as provided by law."

Annulment of Marriage.

A marriage may be annulled for the following causes:

"1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party

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for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless said party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterward freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable. Civil Code, Sec. 82.

Distinction Between Annulment and Divorce.

Annulment is not the same as divorce.

A marriage is dissolved by a decree of divorce for causes occurring after the marriage. A marriage is annulled for causes existing at the time of the marriage. A decree of divorce dissolves an existing marriage; it releases the parties from the obligations of an existing, valid contract. A judgment of annulment goes to the contract itself; it determines that there never was a valid contract of marriage between the parties. Annulment is granted when proof of the existence of any of the grounds above specified.

Annulment Denied, though cause existed, When

Annulment will be denied, when sought on ground that person seeking it was under legal age, if, after obtaining full age, such party freely cohabits with the other as husband or wife. (Civil Code, Sec. 82, Sub. 1.)

Also when sought on the ground of mental unsoundness of either party, if, upon restoration to sanity, such party freely cohabit with the other as husband or wife. (Civil Code, Sec. 82, Sub. 3.)

Also when consent of party seeking annulment was obtained by fraud, or force, if such party freely cohabit with

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the other as husband or wife, after obtaining full knowledge of the facts constituting the fraud, or in case of force, after the marriage.

Action for Annulment.

Action for annulment for marriage must be brought in the superior court.

Constitution of California, Art. VI. Sec 6.

The laws of California do not specifically prescribe the county in which the action must be brought.

According to Section 395, Code of Civil Procedure, such an action must be tried in the county in which defendant resides, at the commencement of the action, or if defendant is a non-resident or his residence is unknown, in any county of the state which plaintiff may designate in the complaint. But the action may be commenced in any county of the state, and may be tried therein, unless defendant by certain prescribed proceedings, demands that trial be had in the proper county.

Civil Code, Sec. 128, provides that actions for divorce must be brought in the county of plaintiff's residence, but neither the Civil Code, nor the Code of Civil Procedure prescribes the county in which actions for annulment must be commenced.

Appeal may be taken to the supreme court from judgment annulling or refusing to annul marriage.

Parties and Limitation of Action.

An action to obtain a decree of nullity of marriage must be commenced within the periods and by the parties as follows.

1. Upon the ground of non-age, by the person who has married under the age of consent, and within four years after attaining the age of consent. (Age of consent—with males, eighteen; females, fifteen); or by the parent, guardian, or other person having charge of such non-aged person at any time before the married minor has arrived at the age of legal consent.

2. Upon the ground that either party had a husband or wife living at the time of the marriage;—by either party, during the life of the other, or by such former husband or wife.

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3. For unsoundness of mind, by the party injured, or by his guardian, or by a relative at any time before the death of either party.

4. For fraud;—by the injured party within four years after discovery of facts constituting fraud.

5. For force;—within four years after marriage.

6. For physical incapacity;—by the injured party within four years after the marriage. (Civil Code, Sec. 83.)

Effect of Annulment on Children.

A judgment of nullity does not affect the legitimacy of children begotten before the judgment. (Civil Code, Sec. 84.)

DISSOLUTION OF MARRIAGE.

How Dissolved.

Marriage is dissolved only by—

1. Death of one of the parties;
2. Judgment of divorce. (Civil Code, Sec. 90.)

DIVORCE.

Causes.

Divorce may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony. (Civil Code, Sec. 92.)

Adultery.

“Adultery is the voluntary sexual intercourse of a married person with a person other than the offender’s husband or wife.” Civil Code, Sec. 93.

Extreme Cruelty.

“Extreme cruelty is the wrongful infliction of grievous (1) bodily injury, or grievous (2) mental suffering upon the other by one party to the marriage.” Civil Code, Sec. 94.

Extreme cruelty consists in the infliction of (1) bodily injury; (2) mental suffering.

As stated by supreme court of California, in the case of Waldron v. Waldron, 85 Cal. 251, “the degree of cruelty which the law recognizes as a cause of divorce, never has been exactly defined.”

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The court continues: "Perhaps as near an approach to an exact definition as is practicable is made by Mr. Bishop, who, admitting the great difficulty of formulating such a definition, thinks the task is not impossible, and gives, as his definition, the following:

'Cruelty is such conduct in one of the married parties, as to the reasonable apprehension of the other or in fact, renders cohabitation physically unsafe to a degree justifying a withdrawal therefrom.' 1 Bishop, on Marriage and Divorce, 6 Ed. Sec. 717."

In this case—Waldron v. Waldron—the supreme court held that the infliction of mental suffering alone does not constitute ground of divorce, that to have such effect the mental suffering must result in physical injury.

In this case, to support her charge of cruelty, the plaintiff charged that her husband had frequently applied to her vile and opprobrious epithets, and that such conduct caused her to undergo great mental suffering. It was not found that defendant's conduct or the mental suffering caused thereby resulted in any physical injury or suffering. The trial court granted the wife a divorce. This judgment was reversed by the supreme court, on the ground above stated. In its opinion, the court says:

"The infliction of grievous mental suffering is not the equivalent of extreme cruelty in a legal sense, nor is extreme cruelty a necessary inference from the inflicting of grievous mental suffering."

The decision in Waldron v. Waldron was not unanimous. It was rendered by a bare majority, three justices dissenting. Justice MacFarland filed a dissenting opinion in which he vigorously protested against the decision of the majority. His dissenting opinion which appears at page 266 of 85 Cal. is commended to the reader as a masterly expression of the most advanced and enlightened thought upon this subject.

Waldron v. Waldron Overruled.

The doctrine announced in Waldron v. Waldron did not long prevail. In less than two years, the supreme court became dissatisfied with its decision, and in later cases repudiated its former opinion.

In Barnes v. Barnes, 95 Cal 171, the supreme court overruled Waldron v. Waldron, holding that the infliction of

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grievous mental suffering alone was sufficient cause for divorce.

The rule announced in *Barnes v. Barnes* was held correct and applied in *Smith v. Smith*, 119 Cal. 183, where the court says that, to justify a divorce on the ground of extreme cruelty, it is not necessary to show that plaintiff suffered any impairment of health. See also *Andrews v. Andrews*, 120 Cal. 184. It is now the settled rule in California that the infliction upon plaintiff of grievous mental suffering alone, without physical injury, is sufficient ground for divorce.

As to the exact nature or degree of mental suffering sufficient to constitute extreme cruelty, no precise rule is, or can be, prescribed. As said in *Barnes v. Barnes* above referred to, "Whether in any given case there has been inflicted this 'grievous mental suffering' is a pure question of fact, to be deduced from all the circumstances of each particular case, keeping always in view the intelligence, apparent refinement, and delicacy of sentiment of the complaining party; and no arbitrary rule of law as to what particular probative facts shall exist in order to justify a finding of the ultimate facts of its existence can be given."

In his dissenting opinion, in *Waldron v. Waldron* above referred to, Mr. Justice MacFarland says: "And while extreme cruelty of either kind cannot, in the very nature of things, be accurately defined, there is often misconduct so far outside of and beyond that produced by the ordinary weaknesses and passions of men that the common judgment of mankind pronounces it extremely cruel. Every case where a divorce is sought on this ground, must depend upon its own particular facts; and a correct decision must depend—as most cases depend—upon the sound sense and judgment of juries and courts." 95 Cal. 177.

The following acts productive of mental suffering have been held to constitute extreme cruelty, within the meaning of section 94, Civil Code:

Calling the wife vile names and charging her with infidelity. *Venzke v. Venzke*, 94 Cal. 235.

Calling vile names, charging infidelity, and accusing wife of attempting to poison husband. *Andrews v. Andrews*, 120 Cal. 184.

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As to the infliction of bodily injury as constituting extreme cruelty.

Owing to the nature of the subject the courts have declined to define cruelty affirmatively.

The definition given by Lord Stowell, an English judge, is the best known; but he gives rather a description of what is not cruelty, than a definition of cruelty. Lord Stowell says, in *Westmeath v. Westmeath*, 2 Hay. Ecc. Supp. 1 4 Eng. Eccl. 238, "In respect to the law, the question naturally occurs, what constitutes cruelty in view of the law, and it is difficult and hardly safe, and at the same time it is unnecessary, to define it affirmatively with precision. It can only be described generally, and rather by effects produced than by acts done."

American courts have defined, or rather, described cruelty as any conduct causing injury to life, limb or health, or creating an apprehension of such injury.

See 9 American & English Encyclopedia of Law, (2nd Ed.) p. 785.

In an early case in California, the Court says "extreme cruelty is any conduct in one of the married parties which furnishes reasonable apprehension that the continuance of the cohabitation would be attended by bodily harm to the other." *Morris v. Morris*, 14 Cal. 76.

The definitions of text writers are not uniform, but they agree that the test of cruelty is physical harm.

What Acts Sufficient.

Gross acts of cruelty are usually sufficient, such as an attempt to kill, or poison, knocking, striking with hand or weapon, choking, pulling hair, spitting in wife's face, or throwing water and threatening violence.

See cases collected at pp. 789-790, 9 Am. & Eng. Cyc. Law (2nd Ed.)

It has been held that conduct of defendant which gives plaintiff a reasonable ground to apprehend injury, if cohabitation is continued, constitutes cruelty. What misconduct will create such apprehension is a question of fact.

See 9 Am. & Eng. Encyc. Law, (2nd ed.) p. 789.

It is not necessary that acts of cruelty be persistent or become a fixed habit, in order to give ground for divorce. *Mahone v. Mahone*, 19 Cal. 626.

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It is sufficient that on two occasions defendant beat and kicked plaintiff, so violently as to cause marks which remained several days. *Eidenmuller v. Eidenmuller*, 37 Cal. 364. In this case, it was held that the wife's bad temper and persistent scolding of her husband did not constitute a defense in a suit for divorce sought on the ground of cruelty.

Wilful Desertion.

"Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert."

The word "wilful," as used in the statute, does not imply malice or wrong, but has its ordinary significance, and simply means "intentional." *Benkert v. Benkert*, 32 Cal. 467. That is, it must appear that the deserting party intended to separate from the other. The separation must also be against the wish of the other party. In other words, separation must be both intentional and wrongful. *Benkert v. Benkert*, above referred to.

"Persistent refusal (1) to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or (2), the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion." Civil Code, Sec. 96.

The clause "when there is no just cause for such refusal" applies to either of the refusals specified in the statute. *Fink v. Fink*, 137 Cal. 559.

"When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling place, or to be absent and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other." Civil Code, Sec. 97.

The reason underlying this provision is, that if absence be caused by stratagem or fraud, it is not wilful or wrongful.

"Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but is desertion by the other party." Civil Code, Sec. 98.

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“Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.” Civil Code, Sec. 99.

“Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.” Civil Code, Sec. 100.

Mere absence, without intent to desert, is not desertion. But if, during an absence with consent of the other party, or which was commenced without intention of deserting, the absent party forms an intention of deserting the other, the absence becomes desertion.

“Consent to a separation is a revocable act, and if one of the parties afterward, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.” Civil Code, Sec. 101.

This section means that, if husband and wife agree to live separate, and one of them should afterward offer to live with the other again and the other refuses so to do, the refusing party is guilty of desertion.

“If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.” Civil Code, Sec. 102.

The “statutory period” referred to, one year (See C. C. 107.)

Section 102 means that, if one spouse desert the other, and within one year after desertion returns, asks forgiveness, offers in good faith to resume marriage relations, and requests the other to so resume, the desertion is cured—that is, divorce could not be granted for such desertion.

If the offer to resume marriage relations be refused, such refusal constitutes desertion by the party refusing.

It has been held that the word “return” as used in section 102, does not mean an actual physical return to the residence of the other party. *Andrews v. Runyon*, 65 Cal. 629.

“The husband may choose any reasonable place or mode

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of living, and if the wife does not conform thereto, it is desertion." Civil Code, Sec. 103.

"If the place or mode of living selected, by the husband, is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him." Civil Code, Sec. 104.

Length of Time.

To constitute ground for divorce, wilful desertion must continue for one year. (Civil Code, 107.)

Wilful Neglect.

"Wilful neglect is (1) the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so ; or it is (2) the failure to do so by reason of idleness, profligacy, or dissipation." Civil Code, Sec. 105.

Under a statute which stated as a ground of divorce, "wilful neglect on the part of the husband to provide for his wife the common necessities of life, having the ability to provide the same, for the period of three years" (See General Laws of California, Vol. 1, p. 331, Act of March 25, 1851.), it was held that, when the earnings of the wife were sufficient for her support, and were applied for that purpose, and defendant exercised no control over them, or interfered with their use, the wife was not entitled to a divorce on the ground of wilful neglect. *Washburn v. Washburn*, 9 Cal. 475. This case was approved and followed in *Rycraft v. Rycraft*, 42 Cal. 444.

The language of the statute under which this ruling was made being practically the same as that of Civil Code, Sec. 105, it is probable that a similar decision would be made in a case arising under that section.

In *Washburn v. Washburn*, above referred to, it was also held that the expression "having the ability to do so," referred to the possession of property, not to the ability to make a living. The Court held that, to obtain a divorce on the ground of wilful neglect it was not sufficient for the wife to show that her husband was able to labor, but that she must show that he had property sufficient to support her.

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To constitute a ground for divorce, wilful neglect must continue one year. (Civil Code, Sec. 107.)

Habitual Intemperance.

“Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which (1) disqualifies the person a great portion of the time from properly attending to business, or (2) which would reasonably inflict a course of great mental anguish upon the innocent party.” Civil Code, Sec. 106.

To constitute a ground for divorce, habitual intemperance must continue one year. (Civil Code, Sec. 107.)

Causes for Denying Divorce.

The existence of a cause does not necessarily entitle the complaining party to a divorce. Certain conduct on the part of the complaining party will result in a denial of a divorce.

Causes for denying a divorce are stated by the Civil Code, as follows:

“Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or
4. Recrimination; or,
5. Limitation and lapse of time.” Civil Code, Sec 111.

Connivance.

“Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.” Civil Code, Sec. 112.

That is, if it appear that the party seeking divorce consented to the commission of the act constituting ground for divorce and such consent was given with any corrupt motive, divorce will be denied.

“Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.” Civil Code, Sec. 113.

Thus, corrupt consent may be shown by a positive act, or expression, or by permission and failure to object.

Collusion.

“Collusion is (1) an agreement between husband and wife that one of them shall commit, or (2) appear to have com-

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mitted, or (3) be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce." Civil Code, Sec. 114.

This section was intended to reach cases where both parties wish a divorce, and, to obtain it, agree, either that an act constituting cause of divorce be actually committed, or that such showing be made as will cause a court to believe such act has been committed.

Condonation.

"Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce." Civil Code, Sec. 115.

If the injured party forgive the other, and marital relations be resumed, divorce will not be granted for the act the commission of which has been forgiven. The expression "conditional forgiveness" used in section 115 means that the forgiveness is granted upon condition that the forgiven party refrain from a repetition of the offense, and treat the other with conjugal kindness. Civil Code, Sec. 117.

"The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights." Civil Code, Sec. 116.

Each and all of these conditions must exist before a marital offense is considered as condoned.

To be effective as condonation an offer of reconciliation must be accepted and acted upon. *Benkert v. Benkert*, 32 Cal. 467. See also *Howard v. Howard*, 134 Cal. 346.

How Shown.

The law provides that when the cause of divorce consists of a course of offensive conduct; or excessive acts of ill-treatment, which, taken together, constitute the offense; then simply living together, or passive endurance, or kind treatment of the offending party shall not be evidence of condonation; but that in such cases, an express agreement to condone is necessary. (Civil Code, Sec. 118.)

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In cases last referred to, condonation cannot be made until after the cause of divorce has become complete. (Civil Code, Sec. 119.)

If the offending party receives forgiveness for one offense, and it appears that he or she concealed from the injured party facts constituting a different cause of divorce existing at the time of condonation, then the condonation is avoided. (Civil Code, Sec. 120.)

How Revoked.

Forgiveness having been granted, is revoked:

1. When the person forgiven commits another act constituting ground for divorce.
2. When the person forgiven is guilty of great conjugal unkindness.

It is not necessary that such conjugal unkindness be sufficient in itself to afford ground for divorce. It is sufficient if it be habitual and goes to show that forgiveness was not accepted in good faith, or that the offending party had not complied with the conditions upon which forgiveness was granted. (Civil Code, Sec. 121.)

Recrimination.

Another cause for denying divorce is technically called recrimination.

“Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff’s cause of divorce.” Civil Code, Sec. 122.

A person who has committed an act which is a cause of divorce, cannot obtain a divorce.

Lapse of Time as Cause of Denial.

“A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,
 2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon or the termination of the period of sentence;
 3. In all other cases, when there is an unreasonable lapse of time before the commencement of the action.”
- Civil Code, Sec. 124.

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The expression "unreasonable lapse of time," as used in Sec. 124, means such a delay as will cause the court to believe that the injured party has:

1. Consented to the commission of the acts complained of.
2. Agreed that the act be committed, or appear to have been committed.
3. Forgiven the offense.
4. Acquiesced in the commission of the act, and intended to continue the marriage relation, notwithstanding its commission. (Civil Code, Sec. 125.)

But the complaining party may show that he or she in fact, did not consent to the act, agree to its commission or apparent commission, forgive the offense, or acquiesce in it; and when such showing is made, lapse of time will not defeat the action. (Civil Code, Sec. 126.)

Plaintiff Must be Resident—Time of Residence.

"A divorce must not be granted unless the plaintiff has been a resident of the state for one year, and of the county in which the action is brought three months next preceding the commencement of the action." Civil Code, Sec. 128.

Plaintiff's residence must be actual and in good faith.

To obtain a divorce, it is absolutely necessary to prove that plaintiff has resided in the state for one year, and in the county for three months next preceding the commencement of the action.

Generally, the law presumes that the domicile of the husband is the domicile of the wife. But this does not apply in divorce cases, and in every case the actual residence of the wife must be shown. (Civil Code, Sec. 129.)

After separation, husband and wife may have separate domiciles, and their actual residence is shown by proof. (Civil Code, Sec. 129.)

Acts Must be Proven.

Acts relied upon as constituting cause for divorce must be proved. If defendant fail to appear and contest the divorce, plaintiff must, nevertheless, prove the commission of the acts relied upon.

Divorce cannot be granted upon the testimony of plaintiff alone; nor upon testimony of defendant alone; nor upon the testimony of both plaintiff and defendant. Nor can it be

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granted upon testimony of plaintiff and admissions—statements—of defendant. The testimony of the parties—husband and wife—must be corroborated—that is, divorce will not be granted unless witnesses other than the parties testify that the acts complained of were committed. (Civil Code, Sec. 130.)

The object of this provision is, to prevent too great facility in the obtaining of divorces. Were it not for this provision, persons who are simply tired of each other, could be released with slight trouble or delay. By failing to appear to contest the divorce suit, the defendant would establish plaintiff's right, and divorce be granted. But section 130 requires all charges to be proved.

Procedure.

Action for divorce must be commenced in the superior court of the county in which plaintiff resides.

After the action is commenced, a summons is served upon defendant requiring him or her to appear within a stated time and answer the charge.

After the expiration of the time stated in the summons, the court will hear testimony. If the court, upon the testimony, concludes that the divorce should be granted, a judgment is rendered declaring that the party in whose favor the court decides, is entitled to a divorce. This judgment is called the "Interlocutory judgment" or "Interlocutory decree." (Civil Code, Sec. 131.)

When one year has expired, from the entry of the interlocutory decree, the court may enter a final judgment. Civil Code, Sec. 132.

This final judgment grants the divorce, restores the parties to the status of single persons and permits either husband or wife to marry again thereafter (Civil Code, Sec. 132.)

According to the last two provisions, neither party to a divorce can marry again within one year after the hearing of the testimony and judgment of the court that the plaintiff is entitled to a divorce.

Relief, Though Divorce Denied.

In an action for divorce, although the court may deny the divorce, it has power to require the husband to provide for the maintenance of his wife and children. (Civil Code, Sec. 136.)

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Expenses Paid by Husband.

In an action for divorce, the court may, in its discretion, require the husband to pay as alimony, any money necessary to enable the wife to support herself and her children, or any money necessary to enable her to prosecute or defend the action. (Civil Code, Sec. 137.)

Custody of Children.

In action for divorce, the court may, at any time during the pendency of the action, or at the final hearing, or at any time after final hearing and during the minority of the children, make such orders as it may deem necessary or proper for the custody, care, education and maintenance of such minor children. At any time the court may change or revoke such orders. (Civil Code, Sec. 138.)

Support of Wife and Children on Divorce or Separation.

"Where a divorce is granted for an offense of the husband, the court may compel him (1) to provide for the maintenance of the children of the marriage, and (2) to make such suitable allowance to the wife for her support, (a) during her life or (b) for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court, may, from time to time, modify its orders in these respects." Civil Code, Sec. 139.

Security for Maintenance or Alimony.

"The court may require the husband to give reasonable security for providing (1) maintenance or (2) making any payments required under the provisions of this chapter, and may enforce the same (a) by the appointment of a receiver, or (b) by any other remedy applicable to the case." Civil Code, Sec. 140.

A receiver is a person appointed as an officer of the court, to take charge of property and dispose of it and its rent, profits, and proceeds, as directed by the court.

From What Property Alimony Paid.

"In executing the five preceding sections, this court must resort:

1. To the community property; then,
2. To the separate property of the husband."

Civil Code, Sec. 141.

"The community property and the separate property

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may be subjected to the support and education of the children in such proportions as the court deems just."

Civil Code, Sec. 143.

No Allowance if Wife has Sufficient Support.

"When the wife has either (1) a separate estate, or (2) there is community property sufficient to give her (a) alimony, or (b) a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband."

Civil Code, Sec. 142.

Children Affected by Divorce.

"When a divorce is granted for the adultery of the husband, the legitimacy of the children of the marriage begotten of the wife before the commencement of the action is not affected."

Civil Code, Sec. 144.

"When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case." Civil Code, Sec. 145.

Disposition of Community Property.

"In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:

1. If the decree be rendered on the ground of adultery, or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former

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owner of such property, subject to the power of the court to assign it for a limited period to the innocent party."

Civil Code, Sec. 146.

Alimony and Maintenance Without Divorce.

"When the wife has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for divorce, maintain in the superior court an action against him for permanent support and maintenance of (1) herself, or of herself, and (2) children. During the pendency of such action, the court may, in its discretion, require the husband to pay as alimony, any (3) moneys necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court."

Civil Code, Sec. 137.

Obligations, Rights and Duties of Husband and Wife.

"Husband and wife contract towards each other obligations of mutual respect, fidelity and support."

Civil Code, Sec. 155.

For violation of obligation of respect, the law provides no remedy. Relief against violation of obligation of fidelity and support is awarded when the obligation of fidelity is broken by adultery, or the obligation of support by wilful neglect.

Rights of Husband.

"The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto."

Civil Code, Sec. 156.

"The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable from infirmity to support himself."

Civil Code, Sec. 176.

Obligations of Husband.

"A husband is bound to support his wife."

Civil Code, Sec. 155.

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Section 174, Civil Code, by necessary implication imposes upon the husband an obligation of support.

Section 174, is as follows:

"If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband."

Husband is bound to support children of himself and wife.

But is not bound to support children of his wife by a former marriage. Civil Code, Sec. 209.

Husband Not Liable, if Abandoned.

"A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement." Civil Code, Sec. 175.

Obligations of Wife.

Obligation of support.—See Civil Code, Secs. 155, 176, above referred to.

Relation as Affecting Property Rights.

"Neither husband nor wife has any interest in the property of the other but neither can be excluded from the other's dwelling." Civil Code, Sec. 157.

"A husband and wife may hold property as joint tenants, tenants in common, or as community property." Civil Code, Sec. 161.

CHAPTER II.—PERSONAL RELATIONS—AS TO CHILDREN

Right to Children—Father Preferred, When.

“The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him or is living separate from him by agreement.

If the father (1) be dead, or (2) be unable, or (3) refuse to take the custody, or (4) has abandoned his family, the mother is entitled thereto.” Civil Code, Sec. 197.

“The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.” Civil Code, Sec. 198.

“When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section two hundred and forty-six.” Civil Code, Sec. 214.

“Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, (1) during the pendency of such action, or (2) at the final hearing thereof, or (3) afterwards, make such order of decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just, and in accordance with the natural rights of the parents, and the best interests of the children and may, (4) at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties including the children may require.” Civil Code, Sec. 199.

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Illegitimate Child.

"The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings."

Civil Code, Sec. 200.

Allowance to Parent.

"The proper court may direct an allowance to be made to the parent of a child out of its property, for its past or future support and education, on such conditions as may be proper whenever such direction is for its benefit."

Civil Code, Sec. 201.

No Control Over Child's Property.

A parent, as such, has no control over the property of his child.

Civil Code, Sec. 202.

To obtain control over a child's property, it is necessary that the parent be appointed guardian.

When Parental Authority Ceases.

"The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;
2. Upon the marriage of the child; or,
3. Upon its attaining majority."

Civil Code, Sec. 204.

Adopted Children.

A married man cannot adopt a child without his wife's consent.

Civil Code, Sec. 223.

Nor can a married woman adopt a child without her husband's consent.

Civil Code, Sec. 223.

Method of Adoption.

See p. 64, post.

As to the Guardianship of Child.

The mother may be appointed guardian of her child.

"A guardian is a person appointed to take care of the person or property of another."

Civil Code, Sec. 236.

"The person over whom or over whose property a guardian is appointed, is called his ward."

Civil Code, Sec. 237.

"Guardians are either:

1. General; or,
2. Special."

Civil Code, Sec. 238.

"A general guardian is a guardian of the person or of all the property of the ward within this state, or of both."

Civil Code, Sec. 239.

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"Every other guardian is a special guardian."

Civil Code, Sec. 240.

Guardian.—How Appointed.

"A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent if the other be dead or incapable of consent.

2. If the child be illegitimate, by the mother."

Civil Code, Sec. 241.

If a guardian be not appointed by will, or deed, the superior court of the county where the ward resides has power to appoint a guardian.

Code of Civil Procedure, Sec. 1747.

The court will appoint a guardian upon petition of a relative or other person on behalf of the minor, or on petition of the minor, if fourteen years of age.

Code of Civil Procedure, Sec. 1747.

Rules for Awarding Custody or Appointing General Guardian

"In awarding the custody of a minor or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender age, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;

3. Of two persons equally entitled to its custody in other respects, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

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(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative.

4. Any parent who (1) knowingly or wilfully abandons, or (2) having the ability so to do, (3) fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who (1) knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, (2) during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all rights to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have the preferred right to the guardianship of such child."

Civil Code, Sec. 246.

Guardianship Terminated.

"The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by Section two hundred and fifty-three;

2. By the solemnized marriage of the ward; or,

3. By the ward's attaining majority.

Civil Code, Sec. 254.

"The power of a guardian appointed by court, is suspended only:

1. By order of the court; or,

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

3. The guardianship over the person of the ward by the marriage of the ward."

Civil Code, Sec. 255.

Powers and Duties of Guardian.

"Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged."

Code of Civil Procedure, Sec. 1753.

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Before a guardian's appointment takes effect, the guardian must give bond in a sum to be fixed by the court, to make an inventory of the ward's estate and return the same to the court, to dispose of and manage the ward's estate according to law, and for the best interests of the ward, and to faithfully discharge all duties of the trust in relation to the property, care, custody and education of the ward. The bond shall also be to the effect that the guardian shall render accounts on oath, of all property, moneys and estate of the ward in the guardian's hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same; and at the expiration of the trust to settle accounts with the court or with the ward, if of full age, and to pay over and deliver to the ward, or to his executor or administrator, or to the guardian's successor, all money or property remaining in his hands. Code of Civil Procedure, Sec. 1754.

A guardian must render an account upon the expiration of one year from appointment, and as often thereafter as may be required by the Court. Code of Civil Procedure, Sec. 1774.

A guardian must pay his ward's debts out of the ward's personal estate and the income of his real estate, and if these sums are not sufficient, may obtain an order of court directing that any property of the ward, real or personal, be sold to pay such debts.

Code of Civil Procedure, Sec. 1768.

The guardian must settle all accounts of his ward, collect debts due; and manage the ward's estate frugally and without waste, and apply the same in paying for the support, maintenance and education of the ward.

Code of Civil Procedure, Secs. 1769-1770.

Guardian Reimbursed.

If the guardian advance money for the support, maintenance and education of the ward, and show proper vouchers therefor, he is entitled to be reimbursed out of the ward's estate. Code of Civil Procedure, Sec. 1771.

Sale or Mortgage.

When it is necessary to raise money to support or educate the ward, the guardian may, under order of court,

sell any real or personal property belonging to the ward. Or the court may order a sale when the best interests of the ward or of his estate require.

Code of Civil Procedure, Secs. 1777-1778.

Proceeds of sales, not necessary to be used for ward's education and support, may be invested by the guardian under order of court. Code of Civil Procedure, Sec. 1780.

A guardian may also, under order of court, mortgage or lease the ward's real or personal property to obtain funds for the ward's education and support.

Code of Civil Procedure, Sec. 1577.

The order to sell, mortgage or lease, is made by the court upon petition, notice being given as prescribed by law. Code of Civil Procedure, Secs. 1778, 1577, 1579.

Expenses and Compensation of Guardian.

Courts will allow a guardian the amount of his reasonable expenses incurred in the settlement of his trust; also a reasonable compensation for his services.

Code of Civil Procedure, Sec. 1776.

Courts also allow a guardian a reasonable sum as attorney's fees.

TITLE TWO—PROPERTY RIGHTS

The laws of California have done away with the old fiction of the unity or identity of Husband and Wife. This has been accomplished, not by positive enactment, but by recognition of woman's independent existence, and by conferring upon her the unrestricted rights to own property and make contracts.

CHAPTER I.

A woman has an absolute, unrestricted right to own real or personal property.

Separate Property.

A woman's separate property consists of all property owned by her before marriage, and that afterwards acquired by gift, bequest, devise, or descent.

Civil Code, Sec. 162.

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That is, all property, however, acquired, owned by a woman while single, is, after marriage, her separate property.

Property acquired after marriage is separate property when it has been acquired.

a. By gift—which is “A transfer of personal property made voluntarily, and without consideration.”

(Civil Code, Sec. 1146.)

b. By bequest, which is personal property acquired by will.

c. By devise which is real property (land) acquired by will.

d. By descent. Property—either real or personal is acquired by descent when it is inherited from a relative who dies without having made a will.

Separate property continues to be such until its character is changed (a) by its owner by sale, gift or will, (b) by act of the law—as an execution sale, (c) by owner's death without making a will. Thus, if a woman acquire property through gift, devise or bequest made by her husband, it is her separate property; and if she contracts a second marriage, the property acquired from the first husband continues to be her separate property. The rents, issues and profits of separate property are also separate property (Civil Code, Sec. 162). Thus, if a woman owning property marries and afterward receive rent or income from her property, the rent or income is separate property.

As to her separate property, a woman has the same rights as a man has in regard to his property. She may convey her separate property without her husband's consent. (Civil Code, Sec. 162). She may dispose of it by will.

The separate property of a married woman is not liable for the debts of her husband (Civil Code, Sec. 171). But is liable for her own debts contracted before or after marriage.

Civil Code, Sec. 171.

But such property is liable for the payment of debts contracted by husband or wife for necessities of life furnished to them, or either of them, while living together. But this liability does not attach to property owned by the

wife at the time of marriage, or acquired by devise or succession after marriage. Civil Code, Sec. 171.

Separate property of the husband is defined in the same way as separate property of the wife (Civil Code, Sec. 163).

The husband's separate property is not liable for the wife's debts contracted prior to marriage. (Civil Code, Sec. 170).

Community Property.

All property acquired after marriage by either husband or wife otherwise than by gift, bequest, devise, or descent, is community property. (Civil Code, Sec. 164.)

Any money earned by either spouse, after marriage, is community property, unless the wife be living separate from her husband, in which case, the earnings of herself and of her minor children, living with her and in her custody, are her separate property. Community property belongs to what is called the "community." It does not belong to the husband nor to the wife but to an imaginary entity entitled, for want of a better name, "the community."

The wife has no present interest in such property. She has no estate in it.

Of the nature of the wife's status in relation to community property, the Supreme Court of California says:

"It is true the wife is a member of the community and entitled to an equal share of the acquests and gains; but as long as the community exists, her interest is a mere expectancy and possesses none of the attributes of an estate, either at law or in equity". Packard v. Arellanes, 17 Cal. 525. In the case of *In re Burdick*, 112 Cal. 387, the Supreme Court quotes the language here quoted, and continues: "The legal title to the community property is in the husband. He has the absolute dominion and control of it, and the wife has no right or title of any kind in any specific property, but a possible interest in whatever remains upon a dissolution of the community otherwise than by her own death. This cannot be classified as any species of estate known to the law".

For other decisions on this subject, see *Van Muren v. Johnson*, 15 Cal., 308; *Directors v. Abila*, 106 Cal., 355; *Spreckels v. Spreckels*, 116 Cal. 336; *De Godey v. Godey*, 39 Cal., 157.

Management and Control.

The husband has the management and control of the community property. Civil Code, Sec. 172.

He may use it in business, but the returns and profits retain the character of community property.

Liability of Community Property for Debts of Community.

The community property is liable for debts contracted by the community, that is, for debts contracted by either husband or wife for the benefit of the community.

Of Husband.

It is liable for the debts of the husband contracted after marriage, Civil Code, Sec. 172. See also

Of Wife.

The property of the community is not liable for the contracts of the wife made after marriage. But it can be made liable therefor by pledge or mortgage executed by the husband, Civil Code, Sec. 167.

Power of Disposition of Community Property.

The husband has the absolute power to sell, mortgage or exchange the community property. Civil Code, Sec. 172.

He cannot dispose of all of it by will. Civil Code, Sec. 172. He cannot give it away unless the wife, in writing, consents to the gift. Civil Code, Sec. 172.

It may be well at this place to refer to the custom prevalent in California, of requiring the wife to join in all conveyances of land made by the husband.

Her consent is not essential to the validity of the husband's conveyance, if he receive any valuable consideration therefor. But as he cannot, without her consent, dispose of community property without receiving a valuable consideration, and as the facts of the receipt of value cannot be determined from the instrument of conveyance alone, persons buying community land or lending money upon mortgage made upon it, insist that the wife join in the deed or mortgage. A deed of community property, executed by the husband alone may state that a valuable consideration has been received. This statement is not conclusive, but may be disproved by any person in interest. Should the wife claim the property to be community property, she must prove the statements of the deed to be untrue, and that

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value was not received, the purchaser's title would be defeated. To prevent the successful ascertain if such claims, purchasers and lenders require the signature of the wife to deeds or mortgages of community property.

To summarize: The husband can, alone, dispose of or incumber community property for value.

He can give it away, if the wife consent in writing. He can dispose of only one half of it by will. See P Post.

Thus it appears that the wife has no interest in or power over the community property. Her only rights in regard thereto are (a) a right to insist that the husband receive value for any disposition of it which he may make, (b) a right to have certain disposition made of it upon the dissolution of the marital community by divorce or death.

Ultimate Disposition of Community Property.

Upon dissolution of the marital community, community property is divided between the spouses, or between the survivor and the heirs, legatees, or devisees of the other.

The marital community is dissolved.

- (a) By divorce.
- (b) By death.

Disposition on Divorce.

When a marriage is dissolved by a decree of divorce, the community property is disposed of as provided by Civil Code, Sec. 146. See P. Ante.

The court has the power, on granting decree of divorce, to order the homestead sold, and the proceeds of sale divided in such proportions as may be just.

It is the duty of the court, upon granting decree of divorce, to make proper orders for the disposition of the community property. To make such disposition the court has power to order a partition of the property, which means that the property itself may be divided between the spouses, or to order it sold and its proceeds divided.

Civil Code, Sec. 146.

Community property, on granting of divorce, may be subjected to the support of the children of the marriage.

Civil Code, Sec. 143.

The decisions of court regarding disposition of community property are subject to revision on appeal.

It will thus be seen that the wife's only interest in com-

munity property is the right to demand that, upon dissolution of the marital community, all, or a portion of such property be assigned to her.

Disposition on Death.

Death of Wife.

Upon the death of the wife, the entire community property becomes the separate property of her surviving husband. Civil Code, Sec. 1401.

But if, during the marriage, a portion has been set apart to her by judicial decree for her support and maintenance, she may dispose of this portion by will, and in the absence of a will, it goes to her descendants, or to her heirs exclusive of her husband. Civil Code, Sec. 1401.

The mere fact of the wife's death is sufficient to vest community property in the husband. No administration of her estate is necessary for this purpose.

Civil Code, Sec. 1401.

Death of Husband.

Upon the death of the husband, one half of the community property goes to the surviving wife.

Civil Code, Sec. 1402.

The husband may dispose of one half of the community property by will. In the absence of a will, this one half goes to his descendants. If the husband die without a will and without descendants, this one half of the community property is disposed of in the same manner as his separate property. Civil Code, Sec. 1402.

As to disposition of separate property on death of husband, see p. 39, post.

Rights of Wife in Husband's Property.

The wife has, during the life of her husband, no estate or title to his separate property.

Upon divorce the court may provide for her support by the husband and may require him to give security based upon his separate property, or may appoint a receiver of his separate property (Civil Code, Secs. 139-141), but she has not, while the marriage relation exists, any estate in his husband's separate property.

From this it results that the husband may, in his will, completely ignore his wife. The law does not require him to leave her any portion of his separate estate.

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If, after making a will, a man marries, and his wife survive him, the will is revoked, unless (a) provision has been made for her by marriage contract, (b) she is provided for in the will. (c) She is mentioned in the will in such a way as to show an intention not to make provisions for her, (Civil Code, Sec. 1299.,

No other evidence, other than a marriage contract in writing, or the will itself can be admitted to rebut the presumption of revocation, that is, in determining this question the court will consider only the will itself or a marriage contract.

The will being revoked, the husband's separate property is disposed of in the same manner as if he had never made a will.

If the husband dies without making a will, his separate property is disposed of as follows:

If he leaves a surviving wife and one child, one-half goes to the wife, the other to the child, or to its children, if it died prior to the father's death.

If he leaves a surviving wife and more than one child, one-third goes to the wife, the remainder in equal shares to his children, or to the issue of such children as died, leaving issue, prior to the father's death.

If the husband leave no children or issue of deceased, children, one half of his property goes to the surviving wife, the other half to

(a) His father and mother in equal shares, or if either be dead, the whole of this one half goes to the other.

(b) If there be no father or mother, one half goes to his brothers and sisters in equal shares, and to the children of deceased brothers and sisters.

If the husband leave neither children nor issue of deceased children, father, mother, brother nor sister, his whole estate goes to his surviving wife.

Civil Code, Sec. 1386.

If a wife die prior to her husband, and he leave no kindred, any property which was the common property of husband and wife goes at his death to the wife's father, or, if he be dead, to her mother. If there be no father or mother, it goes to her brothers and sisters in equal shares and to the issue of any deceased brother or sister.

Civil Code, Sec. 1386, Sub. Sec. 8.

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If a person die leaving children and the children of a deceased child or children, the grandchildren take their portion of the estate "by right of representation," that is, all the children of a deceased child together take the portion which would have gone to their parent had he or she lived.

Homestead.

A married woman may exercise one right in regard to her husband's separate property, or the community property, that is, by taking a certain step she may

(a) cause a portion of it to be kept free from forced sale to pay his debts.

(b) place such portion in such condition that her husband cannot sell or mortgage it, unless she sign and acknowledge the deed or mortgage.

This right is known as the right of homestead.

A homestead consists of the dwelling house in which the claimant resides, and the land upon which it is situated, when selected in the manner provided by law.

Civil Code, Sec. 1237.

The word "claimant" means person who selects and declares a homestead.

Any married person may claim a homestead.

A married woman may claim a homestead in

- (a) her separate property,
- (b) community property,
- (c) her husband's separate property.

A married man may select a homestead from

- (a) his separate property,
- (b) community property,
- (c) his wife's separate property, provided she consent thereto, her consent to be shown by her joining in the declaration of homestead, and in no other manner.

Civil Code, Secs. 1238, 1239.

Manner of Selecting Homestead.

To secure a homestead, a married woman must sign and acknowledge a document termed "Declaration of Homestead." Civil Code, Sec. 1262.

This declaration must contain

1. A statement that her husband has not made such

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declaration, and that she makes her declaration for their joint benefit.

2. A statement that she resides on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their actual cash value.

Civil Code, Sec. 1263.

The wife must sign the declaration, and acknowledge it, if within this state, before

A clerk of a court of record

A county recorder

A court commissioner

A notary public, or

A justice of the peace.

Civil Code, Sec. 1181.

If the declaration be acknowledged outside this state, it must be before

1. A justice, judge or clerk of any court of record of the United States; or,

2. A justice, judge, or clerk of any court of record of any state; or,

3. A commissioner appointed by the governor of this state for that purpose; or,

4. A notary public; or,

5. Any other officer of the state where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

When signed and acknowledged, the declaration must be recorded in the office of the county recorder of the county in which the land is situated.

Civil Code, Sec. 1264.

Value of Homestead.

A head of a family may select a homestead of not exceeding \$5000.00. Civil Code, Sec. 1260.

A married woman whose husband has not declared a homestead has the rights of a head of a family, so far as relates to homestead rights.

Effect of Declaration.

A declaration of homestead, properly signed, acknowledged and recorded, is effectual as follows:

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A. The land therein described cannot be sold for any debts, except as follows:

(1) Judgments which constituted liens upon the premises and which were rendered prior to the recording of the declaration.

(2) Debts secured by liens of mechanics, contractors, sub-contractors, artisans, architects, builders, laborers, persons furnishing material for the construction of building, upon the premises, or liens securing the purchase price of the land.

(3) Debts secured by mortgages on the premises signed, acknowledged and delivered by both husband and wife.

(4) Debts secured by mortgages which were signed, executed and recorded before the recording of the declaration. Civil Code, Secs. 1240, 1241.

B. The husband cannot sell or mortgage the land unless the wife sign, acknowledge and deliver the deed or mortgage. Civil Code, Sec. 1242.

But if the husband shall become hopelessly insane, the wife may be authorized to sell or mortgage the homestead. Power so to do may be conferred by the superior court of the county wherein the land is situated, after notice given as required by law.

This power is created, and the method of procedure prescribed by Sections 1269a, 1269b, 1269c of the Civil Code.

As stated above, a homestead may be sold to satisfy certain judgments, i. e., those enumerated in Sec. 1241, Civil Code above referred to.

Abandonment of Homestead.

A homestead may be abandoned by a declaration of abandonment signed and acknowledged by husband and wife, if the claimant is married or by claimant alone, if unmarried. Civil Code, Sec. 1243. A homestead may also be abandoned by a grant-deed duly signed and acknowledged.

Civil Code, Sec. 1243.

A declaration of abandonment does not take effect until recorded in the office of the recorder of the county in which the homestead is situated. Civil Code, Sec. 1244.

As above stated, a homestead to the value of five thousand dollars, may be selected by the head of the family. But the excess in value over five thousand dollars is sub-

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ject to execution and may be sold by legal process for the payment of debt.

To subject the homestead to sale under judgments other than enumerated in Sec. 1241, the court appoints certain officers known as appraisers to view the land and determine its value. If the officers report to the court that the homestead land can be divided without material injury, the court directs them to set off to the homestead claimant so much of the land, including the residence, as will amount in value to five thousand dollars. The execution may be enforced against the remainder.

If the appraisers report that the land cannot be divided, the court will direct that the land be sold under the execution. At the execution sale, no bid less than five thousand dollars will be received. Upon making the sale five thousand dollars of the proceeds must be paid to the claimant, the balance will be applied in payment of the execution.

The money paid to the claimant, is, for six months after payment, entitled to the same exemptions as the homestead was. During this period, the husband cannot dispose of it without his wife's consent.

Civil Code, Sec. 1257.

The law governing this subject is set forth in the Civil Code, Secs. 1245-1259.

Homestead by Person Other Than Head of Family.

A person who is not the head of a family may declare a homestead of the value of one thousand dollars. The declaration must contain a statement that claimant resides on the premises and claims them as a homestead, a description of the premises, and an estimate of their actual cash value. Civil Code, Secs. 1263, 1267.

As to recording and effect of declaration, the law is the same as in regard to homesteads by heads of families.

Civil Code, Sec. 1268-1269.

As to subjecting homestead to execution, the law is the same as above stated in regard to homestead by head of family, substituting when necessary, one thousand for five thousand.

Disposition of Homestead at Death.

If homestead was selected by a married person from

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community property, on the death of either spouse the land belongs to the survivor. Civil Code, Sec. 1265.

If selected from the separate property of either spouse, upon the death of the one from whose property it was selected the homestead goes to his or her heirs, or to those to whom it is given by will. Civil Code, Sec. 1265.

But in such case, the court in which the estate of the deceased person is being administered may assign the homestead for a limited period to the family of such deceased person. Civil Code, Sec. 1265.

In no case except as provided by Civil Code, Secs. 1241 and 1245-1259, as above stated, can a homestead be held liable for the debts of the owner. Civil Code, Sec. 1265.

As to whom the homestead shall belong in cases where it was selected from the separate property of one of the spouses, there is an apparent inconsistency between Civil Code, Sec. 1265, above referred to, and Section 1474, Code of Civil Procedure which provides as follows:

"If the homestead selected by the husband and wife, or either of them during their coverture, and recorded while both were living, was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either the husband or the wife, without his or her consent, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the superior court to assign it for a limited period to the family of the decedent. In either case, it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the Civil Code."

To reconcile this apparent conflict and set forth the decisions of the courts upon the subject would involve a discussion of technical questions not within the scope of this work.

TITLE THREE—CONTRACT RIGHTS

Independent Right of Contract Not Affected by Relation.

“Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried; subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations to each other, as defined by the title on trusts.” Civil Code, Sec. 158.

A woman may make any contract a man may make.

“A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged, in the same manner.” Civil Code, Sec. 1187.

“A grant or conveyance of real property made by a married woman, may be made, executed and acknowledged in the same manner and has the same effect as if she were unmarried.” Civil Code, Sec. 1093.

“A married woman may make, execute, and revoke powers of attorney for the sale, conveyance or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried and may be acknowledged in the same manner as a grant of real property.”

Civil Code, Sec. 1094.

Marriage Settlement Contracts.

The law permits husband, wife, or those contemplating the formation of that relation, to adjust their property right by contract. In California, such contracts are known as Marriage Settlement Contracts.

By such contracts, the parties may define their mutual rights and obligations as to property and provide for the support of each other or their children.

Requisites of Contract.

Such contracts must be in writing (Civil Code, Sec. 178, 1624, Sub. 3), signed and delivered (Civil Code, Sec. 178), and recorded in the office of the county recorder of every county in which any land affected is situated.

Civil Code, Sec. 179.

“A minor capable of contracting marriage may make a valid marriage settlement.” Civil Code, Sec. 181.

TITLE FOUR—OTHER RIGHTS OF MARRIED WOMEN

Rights on Settlement of Husband's Estate.

During the settlement of her deceased husband's estate, a widow is entitled to certain allowances and settlements for her support. These allowances are made temporarily for her support pending settlement of the estate. Other provisions are permanent.

Temporary Provision.

"When a person dies leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned are entitled to remain in possession of the homestead, of all the wearing apparel of the family and of all the household furniture of the decedent and are also entitled to a reasonable provision for their support, to be allowed by the superior court, or a judge thereof." Code of Civil Procedure, Sec. 1464.

The inventory referred to must be returned within three months after appointment of executor or administrator. The allowance referred to in Section 1464, Code of Civil Procedure, is a sum of money allowed out of the estate to the family of deceased. It is made by the court upon application. It is usually made payable monthly. Its amount depends upon the value of the estate, and the needs of the family. In making the allowance the court will consider the former mode and style of living of the family and its social position.

If the amount so set apart be found insufficient, the court may increase the amount.

Code of Civil Procedure, Section 1466.

The allowance for support of decedent's family may continue until final settlement of the estate.

Code of Civil Procedure, Sec. 1466.

Family allowance must be paid in preference to all other charges against the estate, except funeral expenses, and the expenses of administration.

Code of Civil Procedure, Sec. 1467.

The allowance may take effect from death of decedent.

Code of Civil Procedure, Sec. 1467.

The court in which the husband's estate is being set-

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tled may also set apart for a limited period a homestead which had been selected from separate property of deceased. Code of Civil Procedure, Sec. 1468.

Permanent Settlement.

The court may set apart, permanently, homestead for the widow, or the widow and minor children, or the minor children.

Code of Civil Procedure, Secs. 1464, 1465, 1468, 1474-1486.

This subject is technical to such an extent that an attempt to simplify it would unreasonably expand the volume of this work. But the right of the widow to a homestead is well established. If a homestead was selected during the marriage, it may, under the circumstances and in the manner prescribed, be set apart to the family. If no homestead was selected during the marriage, it is the duty of the court to select, designate, set apart and record a homestead for the use of the surviving wife and minor children. Code of Civil Procedure, Sec. 1465.

This selection is made by a judge of the court upon petition.

All property exempt from execution, including the homestead, may be set apart for the family.

Code of Civil Procedure, Sec. 1465.

Section 690, Code of Civil Procedure, states what property shall be exempt from execution, but the list is too long to be here inserted.

If decedent left a widow only, property set apart under Sec. 1465, Code of Civil Procedure, belongs to the widow, if he left a minor child or children, one half belongs to the widow and the other half to the child, or to the children in equal shares. Code of Civil Procedure, Sec. 1468.

If the widow has a maintenance derived from her separate property equal to the homestead and other exempt property set apart, the whole property so set apart, except the homestead, must go to the minor children.

Code of Civil Procedure, Sec. 1470.

As to Stock in Corporations.

"Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if

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such married woman were a feme sole. All dividends payable upon any of such shares of stock, may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband." Civil Code, Sec. 325.

As to Stock in Homestead Corporations.

"Married women may hold such shares as they acquire with their personal earnings or those of their children voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands."

Civil Code, Sec. 561.

As to Savings and Loan Corporations.

"Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor." Civil Code, Sec. 575.

Testamentary Power.

A married woman, may, without the consent of her husband, dispose by will of all her separate property.

Civil Code, Sec. 1273.

But if a woman make a will and afterward marry, the will is revoked; and is not revived by the death of her husband. Civil Code, Sec. 1300

Right of Administration.

A married woman may act as executrix of a will.

Code of Civil Procedure, Sec. 1352.

An executrix is a woman appointed by will to settle the estate of a deceased person.

A married woman may act as administratrix of an estate. Code of Civil Procedure, Sec. 1370.

An administratrix is a woman appointed by court to settle the estate of a person who dies without making a will. Executrix and administratrix are the feminines of executor and administrator.

An administratrix with the will annexed, is a woman appointed by court to settle the estate of (1) a person who dies leaving a will but who appoints no executor or executrix, or (2) to settle an estate when the executor or executrix named in the will has failed to qualify or has died or resigned or has been removed.

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A surviving wife is entitled to preference in appointment of an administrator of her husband's estate. Code of Civil Procedure, Sec. 1365, Sub. 1. If she does not wish to be appointed herself, she may select another person, and the person selected by her is entitled to preference over the children, or other relatives of deceased.

She cannot act if she is under the age of majority, not a bona fide resident of this state, convicted of an infamous crime, or adjudged incompetent by reason of drunkenness, improvidence or want of understanding or intelligence.

It is the right and duty of an executrix to take into her possession all of the property of the deceased person and properly care for it, to collect all money due him, pay his debts, pay legacies, and distribute the estate under order of court to the persons entitled to receive it.

When necessary to pay debts or expenses of administration, or the sum allowed by court for the family of the deceased, an executrix or administratrix may, under order of court, sell, mortgage or lease any real property belonging to the estate. She may sell personal property, under order of court, when such sale is necessary to pay debts or expenses, or if the property is likely to depreciate, or if its care and custody would cause loss and expense to be incurred.

She must return to the court an accurate inventory of all property of decedent, and account for all property, real and personal .

An executrix or administratrix shall not make profit by the increase, nor suffer loss by the decrease or destruction without her fault, of property of the estate, (Code of Civil Procedure, Sec. 1614). That is, all profits made from property of the estate belong to the estate; all loss occurring without fault of the executrix or administratrix falls upon the estate.

As soon as the time allowed by law for creditors of the estate to prevent their claim has expired, all debts and taxes are paid, the estate ready to be closed, and the account of the executrix or administratrix is settled, all property of the estate is ordered by court to be distributed to the persons entitled to receive it. To obtain

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such order, the executrix or administratrix presents a petition to the court. Upon the settlement of her account, she will be allowed as compensation for her services, certain percentages of the value of the estate. These percentages are fixed by law.

She will also be allowed as a fee for her attorney certain percentages fixed by law, of the value of the estate.

May Act as Agent.

A married woman may act as agent, or may appoint an agent. Civil Code, Sec. 2296.

Right to Prevent Certain Actions of Husband in Regard to Property.

A homestead cannot be selected from a married woman's separate estate without her consent. Civil Code, Sec. 1239.

Husband cannot dispose of community property without wife's consent, unless he receive a valuable consideration therefor. Civil Code, Sec. 172.

Protection of Personal Rights.

She may recover damages from any person who slanders or libels her. Civil Code, Secs. 43-47.

A married woman has a right to prevent the abduction (taking away) of her husband or child (Civil Code, Sec. 49, Sub. 1-2), and may recover damages from any one so abducting.

She may recover damages from any one who alienates the affections of her husband, Sec. 49, Civil Code, as construed by the supreme court in the case of *Humphrey v. Pope*, 122 Cal., 253.

She may use any force necessary to protect from wrongful injury her husband, child, parent, or other relative, or member of her family, or her ward, servant, master or guest. Civil Code, Sec. 50.

Right to Bring Action.

A married woman may bring or defend actions or suits relating to her personal rights, or to her personal property.

If the action concerns her separate property, or her rights or claim to the homestead property, she may sue alone. Code of Civil Procedure, Sec. 370, Sub. 1.

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When the action is between herself and her husband, she may sue or be sued alone.

Code of Civil Procedure, Sec. 370, Sub. 2.

When she is living separate and apart from her husband, by reason of his desertion or by written agreement between them, she may sue or be sued alone.

Code of Civil Procedure, Sec. 370, Sub. 3.

As to other actions, the laws of California follow the effete barbarism of the common law of England, by requiring that in an action by or against a married woman, her husband is a necessary party.

Code of Civil Procedure, Sec. 370.

"If a husband and wife be sued together, the wife may defend, for her own right, and if the husband neglect to defend, she may defend for his right also."

Code of Civil Procedure, Sec. 371.

"An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages pecuniary, or exemplary as are assessed in her favor." Code of Civil Procedure, Sec. 374.

A widow or a married woman deserted by her husband, may bring an action for the seduction of her daughter. Code of Civil Procedure, Sec. 375, also for the injury or death of a minor child. Code of Civil Procedure, Sec. 376. A widow, as heir of her husband, may bring an action for damages against a person causing the death of her husband. Code of Civil Procedure, Sec. 377.

Sole Traders.

"A married woman may become a sole trader by the judgment of the superior court of the county in which she has resided for six months next preceding the application."

Code of Civil Procedure, Sec. 1811.

Judgment establishing a married woman's status as sole trader is made upon petition to the superior court, and after notice given as prescribed by law. Code of Civil Procedure, Secs. 1811-1813; 1815-1818.

Any creditor of the husband may oppose the application on the ground that the statements of the petition are not true, or that the application is made to defraud such creditor or is made to prevent, or will prevent, him from collecting his debt.

Code of Civil Procedure, Sec. 1815.

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If such opposition be made, the court will hear proof of both parties. If no opposition be made, the court will hear applicants proof, and in either case, will determine the facts. Code of Civil Procedure, Sec. 1816.

If the court be satisfied that the statements of the application are true, it will give judgment authorizing the applicant to carry on in her own name, and on her own account, the business specified in her petition and notice.

Code of Civil Procedure, Sec. 1817.

The sole trader must make and file with the clerk of the court an affidavit in a form prescribed by law, its substance being that her application was made in good faith to enable her to support herself and any dependent, such as husband, parent, sister, child and the like, and not with any view to defraud, delay, or hinder any creditor or creditors of her husband's; and that of the money to be used in business, not more than five hundred dollars have come directly or indirectly from her husband.

Code of Civil Procedure, Sec. 1818.

Rights and Liabilities of Sole Trader.

"When the judgment is made and entered, and a copy thereof, with the affidavit provided for in Section eighteen hundred and eighteen, duly recorded, the person therein named is entitled to carry on the business specified, in her own name, and the property, revenues, moneys, and credit so by her invested and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband; and she thereafter has all the privileges of and is liable to all legal processes provided for debtors and creditors and may sue and be sued alone, without being joined with her husband, provided, however, that she shall not be at liberty to carry on said business in any other county than that named in the notice provided for in section eighteen hundred and twelve, until she has recorded in such other county a copy of said judgment and affidavit." Code of Civil Procedure, Sec. 1819.

"A married woman who is adjudged a sole trader is responsible and liable for the maintenance of her minor children." Code of Civil Procedure, Sec. 1820.

Husband Not Liable for Debt.

"The husband of a sole trader is not liable for any debts

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contracted by her in the course of her sole trader's business, unless contracted upon his written consent."

Code of Civil Procedure, Sec. 1821.

Privileged Communications.

"A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent, nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage, but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other."

Code of Civil Procedure, Sec. 1881, Sub. 1.

TITLE FIVE—PENAL LAWS RELATING TO WOMEN

By Elizabeth L. Kenney

Crimes and Punishments.

Who are capable of committing crimes.

All persons are capable of committing crime except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.
2. Idiots;
3. Lunatics and insane persons;
4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;
5. Persons who committed the act charged without being conscious thereof;
6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

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7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. Penal Code. Sec. 26.

Abduction of Women.

Every person who takes any woman unlawfully, against her will, and by force, menace, or duress compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

Penal Code, Sec. 265.

Seduction for Purpose of Prostitution—Procuration.

Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man—is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.—Penal Code, Sec. 266.

Husband and Wife—When Not Competent Witnesses.

Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases of criminal violence upon one by the other, or in cases of criminal actions or proceedings brought under the provisions of Section 270 of this Code, or in cases of criminal actions or proceedings for bigamy.

Penal Code, Sec. 1322.

Bigamy Defined.

Every person having a husband or wife living, who mar-

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ries any other person, except in the cases specified in the next section, is guilty of bigamy. Penal Code, Sec. 281.

Exceptions.

The last section does not extend:

1. To any person, by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Penal Code, Sec. 282.

(Bigamy, punishment of.) Bigamy is punishable by fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten year.

Penal Code, Sec. 283.

(Marrying a husband or wife of another, punishment.) Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years. Penal Code, Sec. 284.

Incest.

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

Penal Code, Sec. 285.

Keeping Disorderly Houses.

Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

Penal Code, Sec. 316

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Contracting or Solemnizing Incestuous or Forbidden Marriages.

Every person authorized to solemnize marriage, who wilfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

Penal Code, Sec. 359.

Making False Return or Record of Marriage.

Every person authorized to solemnize any marriage, who solemnizes such marriage without first being presented with the marriage license, as required by Section 72 of the Civil Code of this state, or who wilfully makes a false return of any marriage or pretended marriage to the Recorder; or who, having solemnized a marriage, fails for more than thirty days, to file with such recorder the marriage license with the certificate endorsed thereon, as required by Sections 73 and 74 of the Civil Code of this state; and every person who wilfully makes a false record of any marriage return, is punishable as provided in the preceding section.

Penal Code, Sec. 360.

Marrying Under False Personation.

Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

Penal Code, Sec. 528.

Administering Drugs, etc., With Intent to Produce Miscarriage.

Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years. Penal Code, Sec. 274.

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Submitting to an Attempt to Produce Miscarriage.

Every woman who solicits of an person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years. Penal Code, Sec. 275.

Writing or Publishing Notices of Means to Procure Abortion or Miscarriage.

Every person who wilfully writes, composes, or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. Penal Code, Sec. 317.

Rape.

Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years;
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists, but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anaesthetic substance, administered by or with the privity of the accused;
5. Where she is at the time unconscious of the nature of the act, and this is known to the accused;
6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

Penal Code, Sec. 261.

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Punishment of Rape.

Sec. 264. Rape is punishable by imprisonment in the state prison not less than five years. Penal Code, Sec. 264.

When Physical Ability Must be Proved.

No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt. Penal Code, Sec. 262.

Penetration Sufficient.

The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

Penal Code, Sec. 263.

OTHER OFFENSES

Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years. Penal Code, Sec. 284.

Every person who keeps a house of ill-fame in this state resorted to for the purposes of prostitution or lewdness, or who wilfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it. Penal Code, 315.

Every parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. Penal Code, Sec. 653b.

Every person who sells any female person, or receives any money or other valuable thing for or on account of his placing in custody, for immoral purposes, any female person, whether with or without her consent, is guilty of a felony.

Penal Code, Sec. 266f

Every man who by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or

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procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for not less than three nor more than ten years; and in all prosecutions under this section a wife is a competent witness against her husband. Penal Code, Sec. 266g.

Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year or by both. Penal Code, Sec. 269a.

If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this section.

Penal Code, Sec. 269b.

Every person who within this state, takes any female person against her will, and without her consent, or with her consent procured by fraudulent inducement, or misrepresentation for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars. Penal Code, Sec. 266a.

Every person who takes any female person unlawfully, and against her will, and by force, menace or duress, compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the state prison not less than two, nor more than four years. Penal Code, Sec. 266b.

Every person bringing to, or landing within this state, any female person born in the empire of China or the empire of Japan, or the islands adjacent thereto, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whom-

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soever, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months.

Penal Code, Sec. 266c.

Any person who receives any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any male to whom she is not married, is guilty of a felony.

Penal Code, Sec. 266d.

Every person who purchases, or pays any money or valuable thing for, any female person for the purpose of prostitution, or for the purpose of placing her, for immoral purposes, in any house or place against her will, is guilty of a felony.

Penal Code, Sec. 266e.

PART TWO
Laws Relating to Children
By Willoughby Rodman

**TITLE ONE—STATUS, RIGHTS AND
OBLIGATIONS**

CHAPTER I.

Status of Child, and Legitimacy.

“All children born in wedlock are presumed to be legitimate.” Civil Code, Sec. 193.

“All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.”

Civil Code, Sec. 194.

“A child born before wedlock becomes legitimate by the subsequent marriage of the parents.”

Civil Code, Sec. 215.

“The presumption of legitimacy can be disputed only by (1) husband or (2) wife, or (3) the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.”

Civil Code, Sec. 195.

CHAPTER II.

Rights of Children and Obligation of Parents.

“The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.”

Civil Code, Sec. 196.

“If a parent chargeable with the support of a child dies, (1) leaving it chargeable to the county, and (2) leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the

parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent." Civil Code, Sec. 205.

"It is the duty of the (1) father, the (2) mother, and the (3) children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding." Civil Code, Sec. 206.

"If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent." Civil Code, Sec. 207.

"A parent is not bound to compensate (1) the other parent, or (2) a relative, for the voluntary support of his child, without an agreement for compensation, nor (3) to compensate a stranger for the support of a child who has abandoned the parent without just cause."

Civil Code, Sec. 208.

CHAPTER III.

Custody of Children.

"A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child." Civil Code, Sec. 213.

"The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father (1) be dead, or (2) be unable; or (3) refuse to take the custody; or (4) has abandoned his family, the mother is entitled thereto."

Civil Code, Sec. 197.

"The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and re-

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ceiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment."

Civil Code, Sec. 211.

"The wages of a minor employed in service may be paid to him, until the parent or guardian entitled thereto gives the employer notice that he claims such wages."

Civil Code, Sec. 212.

"The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other."

Civil Code, Sec. 198.

"When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section two hundred and forty-six."

Civil Code, Sec. 214.

"The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings."

Civil Code, Sec. 200.

Control as Between Husband and Wife.

"Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, (1) during the pendency of such action, or (2) at the final hearing thereof, or (3) afterwards, make such order or decree in regard to the support, care, custody, education and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may (4) at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require."

Civil Code, Sec. 199.

Rights of Child.

"The parent, as such, has no control over the property of the child."

Civil Code, Sec. 202.

"The abuse of parental authority is the subject of judicial cognizance in a civil action brought (1) by the child, or (2) by its relative within the third degree, or (3) by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced." Civil Code, Sec. 203.

CHAPTER IV.

Reciprocal Rights of Parent and Child.

"It is the duty of the (1) father, the (2) mother, and the (3) children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding." Civil Code, Sec. 206.

CHAPTER V.

Guardianship.

As to powers and duties of guardians, see P. ante.

CHAPTER VI.

Adoption.

Besides children by nature, the laws of California recognize children by adoption.

Any minor may be adopted by any adult person who is ten years older than the minor. Civil Code, Sections 221-222.

A married person cannot adopt a child without the consent of his or her spouse, if the spouses be living together and the non-consenting party be capable of consenting.

Civil Code, Sec. 223.

"A legitimate child cannot be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except that consent

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is not necessary from a father or mother (1) deprived of civil rights, or (2) adjudged guilty of (a) adultery or cruelty, and (b) for either cause divorced, or (3) adjudged to be habitually intemperate in the use of intoxicants, or who (4) has been judicially deprived of the custody of the child on account of (a) cruelty or (b) neglect; (Abandoned child), neither is the consent of any one necessary in the case of any abandoned child; provided, however, that any such child, being a half-orphan, and kept and maintained at any orphan asylum in this state for more than two years, may be adopted with the consent of the managers of such orphans' home without the consent of the parent unless such parent has paid toward the expenses of maintenance of such half-orphan at least a reasonable sum during the said time, if able to do so. (Deserted child.) Any child (1) deserted by both parents, or (2) left in the care and custody of another by its parent or parents, (a) without any agreement or provision for its support, (b) for the period of one year, is deemed to be an abandoned child within the meaning of this section, and where the parent is a non-resident of this state such child may without the consent of either parent be adopted with the consent of the managers of such home whenever it has been left in such home for more than one year.'

Civil Code, Sec. 224.

"The consent of a child, if over the age of twelve years, is necessary to its adoption." Civil Code, Sec. 225.

"Any person desiring to adopt a child may, for that purpose, petition the superior court of the county in which the petitioner resides. The (1) person adopting a child, and (2) the child adopted, and (3) the other persons, if within or residents of this state, whose consent is necessary, must appear before the court, and the necessary consent must thereupon be signed, and (5) an agreement executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this state, then (6) their written consent, duly proved or acknowledged according to sections eleven hundred and eighty-two and eleven hundred and eighty-three, (7) must be filed in

said superior court at the time of the application for adoption." Civil Code, Sec. 226.

"The court must (1) examine all persons appearing before it pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, it must (2) make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. The petition, agreement, consent and order must be filed and registered in the office of the county clerk in the same manner as papers in other special proceedings."

Civil Code, Sec. 227.

"A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation." Civil Code, Sec. 228.

"The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it."

Civil Code, Sec. 229.

"The father of an illegitimate child, by (1) publicly acknowledging it as his own, (2) receiving it as such, (3) with the consent of his wife, if he is married, (4) into his family, and (5) otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption."

Civil Code, Sec. 230.

CHAPTER VII.

Minor Child As Apprentice.

"Every minor of the age of fourteen years or upwards may be bound by indenture as an apprentice to any mechanical trade or art or the occupation of farming to the age of eighteen years, if a female, or to the age of twenty-one years, if a male." Civil Code, Sec. 264.

"A minor, with his consent, may be bound (1) by his father, or, in case of his (a) death or (b) incompetency, or

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where he has (c) wilfully abandoned his family for one year without making suitable provision for their support, or (d) is habitually intemperate in the use of intoxicants, or (e) is a vagrant, then by (2) his mother or (3) legal guardian. An (4) executor, who by the will of the father, is directed to bring up a child to a trade or calling, has power to bind him by indenture in like manner as the father might have done, if living. If a child is illegitimate, the mother alone has power to bind him. If a minor has no parent or guardian competent to act for him, he may bind himself, with the approval of the superior court of the county wherein he resides. (Mother marrying). If the mother of a minor, whether legitimate, or illegitimate, marries after his birth, she cannot bind him without the approval of such superior court.' Civil Code, Sec. 265.

"Every indenture of apprenticeship (1) must be executed in duplicate, (2) must state the age of the minor, and, except as hereinafter provided, (3) must show that he consented thereto, (4) must be signed by him and the person binding and the master, and when made with the approval of the superior court, (5) a certified copy of the order of approval must be attached to the indenture. One copy of the indenture (6) must be delivered to the master and (7) the other kept for the use of the minor by his parent or guardian when executed by him, or, when made with the approval of the court, (8) it must be filed and deposited with the clerk for safekeeping for the use of the minor. No indenture binds the minor after the death of the master, but thereafter the minor may be bound anew. Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void."

Civil Code, Sec. 266.

If, in his will, a parent direct his executor to bring up his child to some trade or calling, the executor may bind such child as clerk or apprentice in the same manner as the father might have done. If the mother be living, her consent is necessary.

"When a minor is poor, homeless, chargeable to the county or state, or an outcast, who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority. Proceedings therefor may be instituted by any

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citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted, among other things, (1) a clause to the following effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling, and, (2) at the expiration of his term of service, must give him or her fifty dollars in gold, and (3) two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold." Civil Code, Sec. 263.

"A master must not remove his apprentice out of the state, and must pay and deliver to him the money, clothes and other property to which he is entitled under the indenture of apprenticeship, to be held by him as his sole property." Civil Code, Sec. 269.

"Parents and guardians and such court must, from time to time, inquire into the treatment of children, bound by them respectively, or with their approval, and the judges of such courts are responsible for the charge of apprentices bound by a court or with its approval, and must defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters."

Civil Code, Sec. 270.

"The superior court must hear the complaints of apprentices who reside within the county against their masters, alleging (1) undeserved or immoderate correction, (2) insufficient allowance of food, raiment or lodging, (3) want of instruction in the different branches of their trade or calling, or (4) that they are in danger of being removed out of the state, or (5) any violation of the indenture of apprenticeship, and the court must hear and determine such case and make such order therein as will relieve the party in the future." Civil Code, Sec. 271.

"The superior court has power, where circumstances require it, (1) to discharge an apprentice from his apprenticeship, and, in case any money or other thing has been paid or contracted to be paid by either party in relation to the apprenticeship, the court must (2) make such order concerning the same as seems just and reasonable. If

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the apprentice so discharged was originally bound by the superior court, it must, if found necessary, again bind such minor, if under age." Civil Code, Sec. 272.

"Every master is liable to an action on the indenture for a breach of any covenant thereof on his part. All damages recovered in such action, after deducting necessary charges in its prosecution, belong to the minor, and must be applied and appropriated to his use by the person recovering it in his behalf, and must be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If no action is brought during the minority of the apprentice, it may be commenced by being in his own name at any time within two years after his coming of age." Civil Code, Sec. 273.

"An apprentice who is guilty of (1) any gross misbehavior, or, (2) refusal to do his duty, or (3) wilful neglect thereof, is liable to the complaint of his master in the superior court of the county wherein the apprentice resides. Such complaint must (4) set forth the circumstances of the case, and (5) have attached thereto a citation, signed by the clerk of the court, requiring him and all persons who have covenanted in his behalf to appear and answer the complaint within ten days after the service thereof. The complaint and citation must be served in the manner required for serving civil process. When the parties have answered, or when, though they have not answered, the time therefor allowed after the service of the complaint has expired, the court must proceed to hear and determine the cause, and, if the evidence warrants it, may render judgment that the master be discharged from the contract of apprenticeship and for costs of suit. Such costs may be recovered from the parent or guardian of the minor, if there is any who signed the indenture, and execution therefor may issue accordingly. If there is no parent or guardian liable for such cost, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he arrives at full age. He is also liable to the master in an action on the indenture for the breach of any covenant on the part of the apprentice contained therein, committed before the master was discharged from the indenture." Civil Code, Sec. 274.

"It is unlawful for any person (1) to entice, counsel

or persuade to run away any apprentice, or (2) to harbor or conceal him, knowing him to be a runaway. Any party so offending is guilty of misdemeanor, and may be fined not more than one hundred dollars, to be recovered by the master in any court having jurisdiction."

Civil Code, Sec. 275.

"Whenever any master wishes (1) to remove out of the state, or (2) to quit his trade or business, he must appear with his apprentice before the superior court of the county in which the latter resides, and if the court is satisfied that the master has done justice to the apprentice for the time he has had charge of him, the court has power to discharge the master from the indenture and to again bind the apprentice, if necessary."

Civil Code, Sec. 276.

TITLE TWO—CRIMINAL LAWS RELATING TO CHILDREN

Compiled by William Chambers

Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man—is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in a county

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jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. Sec. 266 Penal Code.

Every person who takes away any female under the age of eighteen years from her father, mother, guardian or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

Sec. 267 Penal Code.

A parent who wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attendance for his child, is guilty of a misdemeanor.

Sec. 270 Penal Code.

Every parent of any child under the age of six years, and every person to whom such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year.

Sec. 271, Penal Code.

Every person who knowingly and wilfully abandons or who having ability so to do, fails or refuses to maintain his or her minor child under the age of fourteen years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into such asylum or institution application is made is an orphan, is guilty of misdemeanor.

Sec. 271a, Penal Code.

Any person, whether as parent, relative common guardian, employer or otherwise, having the care, custody, or control of any child under the age of sixteen years, who exhibits, uses or employs, or in any manner, or under any pretense, sells, apprentices, gives away, lets out, or disposes of any such child to any person, under any name, title or pretense, for or in any business, exhibition or vocation, injurious to the health or dangerous to the life or limb of such child, or in or for the vocation, occupation, service or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever,

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or for or in any obscene, indecent or immoral purposes, exhibition or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or who causes, procures, or encourages such child to engage therein, is guilty of a misdemeanor, and punishable by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the County Jail for a term not exceeding six months, or by both such fine and imprisonment. Nothing in this section contained applies to or affects the employment or use of any such child, as a singer or musician in any church, school or academy, or the teaching or learning of the science or practice of music; or the employment of any child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or President of the Board of Trustees of the city or town where such concert or entertainment takes place. Sec. 272, Penal Code.

Every person who takes, receives, hires employs, uses, exhibits, or has in custody any child under the age and for any of the purposes mentioned in the preceding section, is guilty of a like offense, and punishable by a like punishment as therein provided.

Sec. 273, Penal Code.

Any person whether as parent, guardian, employer or otherwise, and any firm or corporation, who as employer or otherwise shall send, direct or cause to be sent or directed to any saloon, gambling house, house of prostitution, or other immoral place, any minor under the age of eighteen years, is guilty of a misdemeanor. Sec. 273, Penal Code.

Any person who wilfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever having the care and custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who wilfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is guilty of a misdemeanor.

Sec. 273a Penal Code.

No child under the age of sixteen years must be placed in any prison, or place of confinement, or in any court room, or in any vehicle for transportation to any place,

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in company with adults charged with or convicted of crime, except in the presence of a proper official.

Sec. 273b Penal Code.

When, upon examination before a court, or magistrate, it appears that any child under the age of sixteen years has been found begging, whether actually begging or under the pretext of selling anything, or wandering and not having any settled place of abode, or proper guardianship, or visible means of subsistence; or destitute, or frequenting the company of reputed thieves, or prostitutes or houses of prostitution or assignation, dance houses, concert saloons, theaters, or places where spirituous liquors are sold; or engaged in any business, exhibition or vocation mentioned in section two hundred and seventy-two; or in the custody of any person convicted of a criminal assault upon it; the court or magistrate may, when it deems it expedient for the welfare of such child, commit it to an orphan asylum, society for the prevention of cruelty to children, or other charitable institution, or make such other disposition thereof as now is or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper or destitute children.

Sec. 273d Penal Code.

Every telephone, special delivery company or association, and every other corporation or person engaged in the delivery of packages, letters, notes, messages, or other matter, and every manager, superintendent, or other agent of such person, corporation, or association, who sends any minor in the employ or under the control of any such person, corporation, association or agent, to the keeper of any house of prostitution, variety theater, or other place of questionable repute, or to any person connected with, or any inmate of, such house, theater, or other place, or who permits such minor to enter such house, theater or other place, is guilty of a misdemeanor.

Sec. 273e Penal Code.

Every person who maliciously, forcibly, fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years.

Sec. 278 Penal Code.

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Every person who sells, or gives, or furnishes in any way to another who is in fact under the age of sixteen years, any tobacco, or preparation of tobacco, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars; provided, however, that this section shall not be deemed to apply to articles furnished or prescriptions from physicians authorized by law to practice medicine, nor to persons who supply such articles to their own children, nor to sales made to such minors upon the written consent of the parents or guardians of such minors first obtained in writing by the vender. Sec. 308 Penal Code.

Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein; or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house or room—shall be guilty of a misdemeanor.

Sec. 309 Penal Code.

Every owner—lessee, or keeper of any house used in whole, or in part, as a saloon or drinking place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor.

Sec. 336 Penal Code.

Every person who sells, gives or delivers to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever. or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years, to visit said saloon or public house where intoxicating liquors are sold, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment, provided, that this section shall not apply to the parents of such children, or to guardians of their wards.

Sec. 397b Penal Code.

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Every person who purchases or receives in pledge or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor. Sec. 501 Penal Code.

Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinctural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

Sec. 651 Penal Code.

No minor, under the age of sixteen years, shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors, or wines, or intoxicating or malt liquors are sold, exchanged, or given away, or at places of amusement known as dance houses and concert saloons, unless accompanied by parent or guardian. Any proprietor, keeper, or manager of any such place who shall admit such minor to, or permit him or her to remain in any such place, unless accompanied by parent or guardian, shall be guilty of a misdemeanor.

Sec. I Act 1878.

Every person having the care, custody or control of any child under the age of sixteen years shall restrain such child from begging, whether actually begging or under the pretext of peddling. Any person offending against this section shall be arrested and brought before a court or magistrate, and for the first offense shall be reprimanded, and for each subsequent offense shall be guilty of a misdemeanor.

Sec. 2 Act. 1878.

Section 1203 Penal Code provides that the court, Judge or Justice may suspend the imposing of sentence as to a defendant over the age of sixteen years if it shall appear that there are circumstances in mitigation of the punishment or that the ends of justice and the interests of society and reform of the defendant may be subserved thereby.

Section 1388 Penal Code provides that final judgment may be suspended on any conviction, charge, or prosecution of a minor, for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is reasonable ground to believe that such minor

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may be reformed, and that a commitment to prison would work manifest injury in the premises.

EDUCATIONAL RIGHTS OF CHILDREN.

The Education of Children is Compulsory.

For the provision of law relating to the Educational Rights of Children, see Statutes of California and especially Section 1662 Pol. Code and the Act to enforce the educational rights of children etc., approved March 24th, 1903 (Statutes of 1903 page 388) and the amendment thereof approved March 20th, 1905 (Statutes 1905., page 388).

Reform Schools, etc., For Children.

There have been established by the California Legislature a Home for the care and training of feeble minded children; also Reform Schools for Juvenile Offenders, such as the Whittier Reform School and the Preston School of Industry.

In 1889 the legislature passed an act establishing an institution at Whittier to which minor offenders might be committed by the court. Such act as amended enacts that when any boy between the ages of seven and sixteen, or any girl between the ages of seven and eighteen years shall be found guilty by a Superior Court of any County in the state and who in the opinion of such court would be a fit subject for commitment to the Whittier Reform School, it shall be lawful for the said court to suspend judgment or sentence (except when the penalty is life imprisonment or death) and to commit such minor to the said school until any such male minor shall have reached the age of sixteen years, or any such female minor shall have reached the age of twenty-one years unless sooner discharged by law or as in the act provided.

For the statutory provisions relating to the Whittier Reform School see Statutes 1889, pages 111 et seq.; Statutes 1893, page 328; Statutes 1895, pages 93 and 122, and Statutes 1905, pages 80 and 226.

In 1889 the legislature passed an Act establishing the Preston School of Industry. Such act enacts that when any boy under the age of eighteen years shall be found guilty, by a magistrate or Court of competent jurisdiction,

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of any offense punishable by fine, or by imprisonment or both, and who, in the opinion of such magistrate or Court, would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or Court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in such Act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school.

For the statutory provisions relating to the Preston School of Industry, see Statutes 1889, pages 100 et seq.; and Statutes 1895, pages 93 and 122.

The California Home for the Care and Training of Feeble Minded Children was established by Act of the Legislature approved March 18, 1885.

SOME SPECIAL CALIFORNIA STATUTES RELATING TO CHILDREN.

Juvenile Court Law.

(Statutes 1903, p. 44; amended by Statute 1905, p. 806).

Section 1. This act shall apply only to children under the age of sixteen years not now or hereafter inmates of a state institution. For the purposes of this act the words "dependent child" shall mean any child under the age of sixteen years who is found begging, or receiving or gathering alms (whether actually begging or under the pretext of selling or offering for sale anything), or being in any street, road or public place for the purpose of so begging, gathering or receiving alms; or who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence; or who is found destitute, or whose home, by reason of neglect, cruelty or depravity on the part of either of its parents or of its guardian, or other person in whose care it may be, is an unfit place for such child; or who frequents the company of reputed criminals or prostitutes, or who is found living or being in any house of prostitution or assignation, or who habitually visits, without parent or guardian, any saloon, or place where

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any spirituous liquors, or wine, or intoxicating or malt liquors are sold, exchanged, or given away, or who is incorrigible, or who is a persistent truant from school. The words "delinquent child" shall include any child under the age of sixteen years who violates any law of this state, or any ordinance of any town, city, county, or city and county of this state.

Section 2. In counties having more than one judge of a superior court, the judges of such court may from time to time designate one or more of their number whose duty it shall be to hear all cases coming under this act. In counties of the first class, such designation shall be made by the presiding judge. The orders and findings, if any, of the superior court, in all cases coming under the provisions of this act, shall be entered in a book to be kept for that purpose and known as the "Juvenile Record" and the court acting under this act shall be called the "Juvenile Court". In justices' courts having more than one justice of the peace, and in police courts having more than one judge, justices of the peace and the judges of the police courts, from time to time may designate one of their respective number whose duty it shall be to hear all cases coming under this act. All cases coming under the provisions of this act shall be heard at a special separate session of the court, and no matter, other than cases under this act, shall be on the calendar, or shall be heard at such session, nor shall there be permitted to be present at such session any person on trial, or awaiting trial, or under accusation of crime, who does not come under the provisions of this act.

Section 3. Any citizen of the state may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child, and praying that the superior court deal with such child as provided in this act. Such petition shall be verified, and shall contain a statement of the facts constituting such dependency as provided in section one of this act. There shall be no fee for filing said petition.

Section 4. Upon the filing of the petition, provided for in section three hereof, a citation shall issue, requiring

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the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein. The parents or guardian of the child, if residing in the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent nor guardian so residing, or if their places of residence be not known to petitioner, then some relative of the child, if there be any residing in said county, and if his residence and relationship to such child be known to petitioner, shall be notified of the proceedings by service of citation requiring them to appear at the time and place to be stated in such citation. In any case the judge may appoint some suitable person to act in behalf of the child, and may order such further notice of the proceeding to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the court, or to bring the child, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in cases of contempt of court. In case any such citation cannot be served, or the party served fails to obey the same, and in any case in which it shall be made to appear to the court that such citation shall be ineffectual, a warrant of arrest may issue on the order of the court, either against the parent or guardian, or the person having the custody of the child, or with whom the child may be, or against the child itself, or any of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the child immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the child may be retained in the possession of the person having charge of the same, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct.

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Section 5. When any child under the age of sixteen years shall be found by said court or judge or justice to be dependent, within the meaning of this act, the court may make an order committing the child, for such time during its minority as the court may deem fit, to the care of some reputable citizen of good moral character, or to the care of some association, society or corporation willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, or to care of the probation officers or other person to remain in the home of the child. The court may thereafter set aside, change or modify such order.

Section 6. The judge of the superior court in and for each county or city and county of the state, or where there are more than one judge of said court, a majority of the judges thereof by an order entered in the minutes of such court, shall appoint seven discreet citizens of good moral character, and of either sex, to be known as probation committee, and shall fill all vacancies occurring in such committee. The clerk of said court shall immediately notify each person appointed on said committee and thereupon said persons shall appear before the judge of said juvenile court, if there be one, or otherwise before a judge of said superior court in said county, and qualify by taking oath, to be entered in said juvenile record, if any, or in the minutes of said superior court, to faithfully perform the duties of a member of such probation committee.

Section 7. The members of such probation committees shall hold office for four years, and until their successors are appointed, provided that of those first appointed, one shall hold office for one year, two for two years, two for three years, and two for four years, the terms for which the respective members first appointed shall hold office to be determined by lot as soon after their appointment as may be. When any vacancy occurs in any probation committee by expiration of the term of office of any member thereof, the successor shall be appointed to hold for the term of four years; when any vacancy occurs for any other reason, the appointee shall hold for the unexpired term of his predecessor.

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Section 8. The members of the Probation Committee shall serve without compensation.

Section 9. The superior court or any judge thereof may at any time require said probation committee or a probation officer to examine into the qualifications and management of any society, association or corporation, other than a state institution, applying to receive any child or children under this act, and to report to the court, provided that nothing in this section shall be construed as giving any probation committee or probation officer any power to enter any institution without the consent of such institution.

It shall be the duty of each probation committee prior to December first in each year to prepare a report in writing on the qualifications and management of all societies, associations and corporations, except state institutions, applying for or receiving any child under this act from the courts of their respective counties, and in said report said committee may make such suggestions or comments as to them may seem fit; said report to be filed in the office of the clerk of the court appointing such committee, for the information of the judges thereof.

Section 10. In counties of the first class there shall be one probation officer and not more than five deputy probation officers; in counties of the second class, one probation officer and not more than one deputy probation officer; in all other counties there shall be one probation officer.

In any county or city and county additional deputy probation officers may be appointed and their appointment approved or disapproved as hereinafter provided, from time to time when in the opinion of the court it may be necessary, provided that they serve without salary.

Section 11. The salaries of the probation officers and deputy probation officers (except as herein otherwise provided) shall be as follows, and shall be paid out of the county treasury of the county for which they are appointed, after being allowed and audited in the same manner as the salaries of other county officers.

In counties of the second class the probation officer shall receive \$125 per month, and the deputy probation

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officer seventy-five dollars per month. In all other counties the probation officer and the deputy probation officers shall serve without compensation, provided, however, that the probation officer and deputy probation officers in all the counties of the state shall be allowed such necessary incidental expenses as may be authorized by a judge of the superior court; and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the said expenses shall be paid out of the county treasury upon a warrant therefor issued by the said court.

Section 12. The offices of probation officer and deputy probation officer are hereby created. The appointments of probation officers and deputy probation officers to serve hereunder in any county or city and county shall be made by the probation committee of said county or city and county from discreet citizens of good moral character. The appointments by each probation committee shall be made in writing, signed by a majority of the members of such committee, and filed with the county clerk of such county, and shall be subject to and shall take effect upon approval by the judge of the superior court appointing such committee, or by a majority of the judges thereof if there be no more than one; such approval to be by order entered in the minutes of said court. The term of office of probation officers and of deputy probation officers shall be two years from the date of the said approval of their several appointments, such probation officers and deputy probation officers may at any time be removed by the judge approving their appointment in his discretion.

Section 13. It shall be the duty of the clerk of any court before which a child is brought under the provisions of this act, or if there be no clerk, then it shall be the duty of the judge or justice of said court, before the hearing of said matter, to notify the probation officer of the county thereof; except in cases where the child is brought before the court by a society, association or corporation which embraces within its objects the care of dependent or delinquent children and which has in the

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last report thereon by the probation committee of such county been favorably passed upon.

Section 14. The probation officer or deputy probation officer detailed by him for that purpose, shall inquire into the child's antecedents, character, history, family environment and cause of delinquency or dependency, and shall make his report in writing to the judge or justice in the case of every child to be dealt with under the provisions of this act as a dependent or delinquent child; but only when the judge so specially orders it in the case of a dependent child who is already in the charge of a society, association or corporation which embraces within its objects the care of dependent children and which has in the last report thereon by the probation committee of such county been favorably passed upon. In the event that such a society, association or corporation shall be so in charge, it shall through its agent or superintendent make such report to the judge in place of the probation officer.

It shall be the duty of said probation officer or said deputy probation officer or said agent or superintendent of such society, association or corporation to be present in court in order to represent the interests of the child when the case is heard, and to furnish to the court such information and assistance as it may require and to make the said report at such time; and to take such charge of the child before and after the hearing as may be ordered.

The probation officer and each deputy probation officer shall have as to any child committed to the care of such probation officer, the powers of a police officer. At any time in his discretion such officer or deputy may bring such child before the court committing such child to his care for such further or other action as the court may see fit.

Any of the duties of the probation officer may be performed by a deputy probation officer, and shall be performed by him whenever detailed to perform the same by the probation officer; and it shall be the duty of the probation officer to see that the deputy probation officer performs his duties.

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Section 15. If any child is arrested and taken before a justice of the peace or police judge, then at any time before the child is found delinquent and a commitment thereunder issues, it may be detained under order of the court in any detention home provided for that purpose by any county, or city and county; or it may be otherwise provided for as the court sees fit in any manner provided herein for the care of a child after the finding of its delinquency. If, after a hearing, any child shall be found to be delinquent by such court, the justice of the peace or police judge may continue the further hearing from time to time, and may, at any time commit the child to the care and custody of a probation officer and may allow such to remain in the home of such child, subject to the visitation of a probation officer, and such child shall report to the probation officer as often as may be required and be subject to be returned to the court for further proceedings whenever such action may appear to be necessary or desirable. If the justice of the peace or police judge at any time deems it necessary or to the best interests of the child that he should be committed to a state reform school or to the care or custody of some association, society or corporation embracing in its objects the care of neglected, dependent or delinquent children, or should be placed in a suitable family home, or that a guardian should be appointed for such child, the justice of the peace or police judge shall certify the case with a transcript of the docket or other record to the clerk of the superior court of the county or city and county in which the justices' court or police court is held, and the officer having the child in charge shall take the child before the superior court, and thereupon the superior court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court on petition as herein provided for dependent children. In such case the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose.

Section 16. In the case of a child alleged to be delinquent within the meaning of this act, and brought be-

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fore the superior court at any time before the child is found delinquent and a commitment thereunder issues, it may be detained under order of the court in any detention home provided for that purpose by any county or city and county; or it may be otherwise provided for as the court sees fit in any manner provided herein for the care of a child after the finding of its delinquency. If the court find the child to be delinquent, said court may continue the hearing from time to time, and may at any time commit the child to the care or custody of the probation officer, and may allow such child to remain in the home of such child, subject to the visitation of a probation officer, and such child shall report to the probation officer as often as may be required, and be subject to be returned to the court for further proceedings whenever such action may appear necessary or desirable, or the court may commit the child to the care or custody of the probation officer, to be placed in a suitable family home, subject to the supervision of such probation officer and the further order of the court, or it may authorize the probation officer to board out the child in some suitable family home in case provision is made by voluntary contribution, or otherwise, for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment; or the court may commit the child for such time during its minority, as the court may deem fit, to the care and custody of some association, society or corporation that will receive it, embracing within its objects the care of dependent or delinquent children; or the court may commit such child to a state reform school, as is now, or may hereafter be provided by law in accordance with the procedure provided by law for such commitment. Provided further that should the legislative body of the county, or city and county, or of a municipality, provide a suitable place for the detention of said dependent and delinquent children, which they are hereby authorized to do, such children may be committed thereto after the adjudication of dependency or delinquency for a definite period to be specified in such order. The court may thereafter set aside, change or modify such order, and may

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provide for a further detention in said place. Any order providing for the custody of a dependent or delinquent child may provide that the expense of maintenance of said child shall be paid by the parent or parents, or guardian, of said child, and in such case shall determine the amount so to be paid, and shall determine whether or not the parent or parents shall exercise any control over said child and the extent thereof, and any disobedience of such order or interference with the custody of the child as therein determined by a parent or guardian having notice of the proceedings or of the order shall constitute a contempt of court. The court may thereafter set aside, change or modify any order herein provided for.

Section 17. No court or magistrate shall commit a child under twelve years of age to jail, prison or police station, but if such child is unable to give bail, it may be committed to the care of the sheriff, police officer, constable or other officer, who shall keep such child in some suitable place provided by the city, county, or city and county, outside of the enclosure of any jail or police station. When any child shall be sentenced to confinement in any institution to which adult convicts or prisoners are sentenced or where adults are confined, it shall be unlawful to confine such child in the same room or yard or enclosure with such adult convicts or prisoners, or to permit such child to come or remain within sight of or meet or come into or remain in the presence of any of such adult convicts or prisoners.

Section 18. Nothing in this act shall be construed to repeal any portion of the act entitled "An act to establish a state reform school for juvenile offenders, and to make an appropriation therefor," approved March 11, 1889, or any of the amendments thereto, or the act entitled "An act to establish the California Home for the Care and Training of Feeble Minded Children, and provide for the maintenance of the same," approved March 18, 1885, or any of the amendments thereto, or the act entitled "An act to establish a school of industry, and provide for the maintenance and management of the same, and to make an appropriation therefor," approved March 11, 1889, or any of the amendments thereto; and in all commit-

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ments to said institutions, the acts in reference to said institutions shall govern the same.

Section 19. No record of or testimony concerning any proceedings against any child under this act shall be admissible as evidence against such child in any other court or proceeding; except in proceedings under this act, and except in guardianship or adoption proceedings relating to said child.

Section 20. This act shall be liberally constructed, to the end that its purpose may be carried out, to-wit: that the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the child be placed in an approved family, with people of the same religious belief and become a member of the family by legal adoption, or otherwise. In this act, words used in any gender shall include all other genders, and the word "county" shall include "city and county."

Section 21. All acts and parts of acts inconsistent with this act are hereby repealed, except as hereinabove provided in section 19.

Act Regulating Employment of Children.

(Statutes 1905, Page 11.)

Section 1. No minor under the age of eighteen shall be employed in laboring in any manufacturing, mechanical or mercantile establishment, or other place of labor, more than nine hours in one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-four hours in a week.

Section 2. No minor under the age of sixteen years shall be employed or permitted to work in any mercantile institution, office, laundry, manufacturing establishment or workshop, between the hours of ten o'clock in the evening and six o'clock in the morning.

No child under fourteen years of age shall be employed in any mercantile institution, office, laundry, manufactur-

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ing establishment, workshop, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages.

Provided that the judge of the juvenile court of the county or city and county, or in any county or city and county in which there is no juvenile court, then any judge of the superior court of the county or city and county in which such child resides, shall have authority to issue a permit to work to any such child over the age of twelve years upon a sworn statement being made to him by the parent of such child that such child is past the age of twelve years, that the parents or parent of such child are incapacitated for labor, through illness, and after investigation by a probation officer or truant officer of the city, or city and county, in which such child resides, or in cities and counties where there are no probation or truant officers, then by such other competent persons as the judge may designate for this purpose. The permit so issued shall specify the kind of labor and the time for which it is issued, and shall in no case be issued for a longer period than shall seem necessary to the judge issuing such permit. Such permit shall be kept on file by the person, firm or corporation employing the child therein designated, during the term of said employment, and shall be given up to said child upon his quitting such employment. Such certificate shall be always open to the inspection of the truant and probation officers of the city and county, city or county in which the place of employment is situated or of the officers of the state bureau of labor statistics.

And provided that any such child, over the age of twelve years, may be employed at any of the occupations mentioned in this act during the regular vacation of the public schools of the city, county or city and county in which the place of employment is situated, upon the production of a permit signed by the principal of the school which such child has attended during the term next preceding any such vacation. Such permit shall contain the name and age of the child to whom it is issued, and the date of the termination of the vacation for which it is issued, and shall be kept on file by the employer during the period of employment, and at the termination of such

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employment shall be returned to the child to whom it was issued.

No minor who is under sixteen years of age shall be employed or permitted to work at any gainful occupation during the hours that the public schools of the city, town or school district in which his place of employment is situated are in session, unless he or she can read English at sight and can write legibly and correctly simple English sentences, or unless he or she is a regular attendant for the then current term at a regularly conducted night school. A certificate of the principal of such school shall be held to be sufficient evidence of such attendance.

Sec. 3. Every person, firm or corporation employing minors under eighteen years of age, in any manufacturing establishment, shall post and keep posted, in a conspicuous place in every room where such help is employed, a written or printed notice stating the number of hours per day for each day of the week required of such persons.

Every person, firm, corporation, agent or officer of a firm or corporation employing or permitting minors under sixteen years and over fourteen years of age to work in any mercantile institution, office, laundry, manufacturing establishment, workshop, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, shall keep a record of the names, ages and places of residence of such minors, and shall have on file a certificate of age and schooling as provided in this act, for every such minor so employed, said record and certificate to be open at all times to the inspection of those whose duty it is to enforce the provisions of the act.

An age and schooling certificate shall be approved only by the superintendent of schools of the city or city and county, or by a person authorized by him, in writing, or where there is no city or city and county superintendent of schools, by a person authorized by the local school trustees; provided that the superintendent or principal of any school of recognized standing shall have the right to approve an age and schooling certificate, and shall have the same rights and powers as the superintendent of public schools to issue the certificate herein provided,

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for children attending such schools. The persons authorized to issue age and schooling certificates shall have the authority to administer the oaths necessary for carrying out the provisions of this act, but no fee shall be charged for issuing such certificates.

An age and schooling certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the public register of birth of such child, or in some other manner, that such child is of the age stated in the certificate.

A duplicate copy of each age and schooling certificate granted under the provisions of this act shall be kept by the person issuing such certificate, such copy to be filed with the county superintendent of schools in the county where the certificate was issued, provided that all such copies of certificates issued between June 25th and December 25th of any year shall be filed not later than December 31st of such year, and those issued between December 25th and June 25th of the ensuing year shall be filed not later than June 30th of each year. Such certificate shall be substantially in the following form, to wit:

Age and Schooling Certificate.

This certifies that I am the (father, mother or guardian) of (name of child), and that (he or she) was born at (name of town or city), in the county of (name of county if known) and state (or country) of (name), on the (day and year of birth) and is now (number of years and of months) old.

Signature as provided in this act.

Town or city, and date.

There personally appeared before me the above named (name of person signing) and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her), knowledge and belief.

I hereby approve the foregoing certificate of (name of child) height (feet and inches), complexion (fair or dark), hair (color), having no sufficient reason to doubt that (he or she) is of the age therein certified, and I hereby certify that (he or she) can or can not read English at sight,

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and can or can not write legibly simple sentences in the English language.

Signature of the person authorized to sign, with his official character and authority.

Town or city, and date.

This certificate belongs to the person in whose behalf it is drawn, and it shall be surrendered to (him or her) whenever (he or she) leaves the services of the person, firm or corporation holding the same.

The certificate as to the birthplace and age of the minor under sixteen and over fourteen years of age shall be signed by his father, his mother, his guardian; if a child has no father, mother or guardian living in the same city or town, his own signature to the certificate may be accepted by the person authorized to approve the same.

Every person authorized to sign the certificate prescribed by this act, who knowingly certifies to any false statement therein, is guilty of a misdemeanor and upon conviction thereof shall be fined not less than five nor more than fifty dollars, or imprisoned not more than thirty days or by both such fine and imprisonment.

Section 4. Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the foregoing provisions of this act, or that employs, or suffers, or permits any minor to be employed in violation thereof, is guilty of a misdemeanor and shall on conviction thereof, be punished by a fine of not less than fifty dollars or more than two hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment, for each and every offense. A failure to produce any age and schooling certificate or permit, or to post any notice required by this act, shall be prima facie evidence of the illegal employment of any person whose age and schooling certificate or permit is not produced, or whose name is not so posted. Any fine collected under the provisions of this act shall be paid unto the school funds of the county, or city and county, in which the offense occurred.

Section 5. Nothing in this act shall be construed to prohibit the employment of minors at agricultural, horticultural, viticultural or domestic labor, during the time

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the public schools are not in session, or during other than school hours.

Section 6. It shall be the duty of the commissioner of the bureau of labor statistics to enforce the provisions of this act. But any person may lay an information before a magistrate or the commission of any public offense defined in this act.

Society for Prevention of Cruelty to Children.

Societies for the prevention of cruelty to children were, previous to the amendments to the Civil Code in 1905, incorporated under an act of the California Legislature for the incorporation of such societies, approved April 3, 1876, but since such amendments to the code said societies are now incorporated under Sections 607 et seq. Civil Code.

Such societies may be formed and incorporated by any number of persons not less than five, a majority of whom must be citizens and residents of California under the general provisions of the Code, and every such society so incorporated may take and hold by gift, purchase, devise or bequest any property real or personal and dispose of the same at its pleasure, but it must not hold real property, the annual income of which exceeds \$50,000 and such corporation or any member or officer thereof may prefer a complaint against any person or persons before any court or magistrate having jurisdiction, for the violation of any law relating to and affecting children and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken.

For further provisions relating to such societies see sections 607 et seq. Civil Code.

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