SOME ASPECTS

OF

SCOTS LAW

AFFECTING

WOMEN and CHILDREN

BY

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PRINTED AND PUBLISHED BY COLIN A. MACLEAN
FOR THE
SCOTTISH COUNCIL OF WOMEN CITIZENS' ASSOCIATIONS,
27 RUTLAND STREET, EDINBURGH.

PRICE 6D. POST FREE 6½D.

PREFACE

THE SIX LECTURES of which the following are abstracts were delivered to a Study Circle of the Edinburgh Women Citizens Association in 1925.

They have been summarised and published in the hope that they may prove as helpful to other Societies as they have been to the above Association in its parliamentary work.

In the course of the lectures several points of law were suggested as worthy of very careful consideration by all citizens :—the age of capacity for marriage : the constitution of irregular marriages : the causes of divorce : the amount of aliment decreed by the Court to be paid to the unmarried mother by the father of her child : protective legislation for women workers : the principles of (1) primogeniture and (2) the preference of males to females, in intestate heritable succession.

These were some of the main points noted. Others will doubtless suggest themselves to readers of the following pages.

H. S. T.

EDINBURGH,
January 1926.

ABSTRACT OF LECTURE
on
"Marriage and Divorce, according to the Law of Scotland"
by
LADY SALVESEN.

The contract of marriage, though constituted by consent of the parties, binds the contracting parties until death or divorce takes place, confers on their children the status and rights of legitimacy, and is the direct source of the laws of succession. It produces its effects, and is accompanied by the duties and rights which attach to married persons, in whatsoever part of the world the parties may subsequently find themselves. In other words, these rights and duties pertaining to spouses depend, not on the law of the country in which the marriage is contracted (which only determines the validity of the marriage ceremony) but on the laws and regulations of the country in which the married pair are domiciled.

There are two modes of marriage, the regular and the irregular. The essential requisite in both is the free, conscious and responsible exchange of consent by the parties to take each other, then and there, as husband and wife.

The parties must both be free to marry and of marriageable age. (The age of capacity for marriage is twelve years for females and fourteen for males). The contracting parties must not be related within the degrees forbidden by the Church.

Regular Marriages.

A Regular Marriage requires (*a*) either (1) Publication of Banns or (2) Notice to the Registrar of Births, Marriages and Deaths and (*b*) that the ceremony shall be performed by a clergyman, before at least two credible witnesses.

Irregular Marriages.

An Irregular Marriage may be constituted by exchange of present consent: the parties consent to take each other, then and

there, as spouses. Neither clergyman nor witnesses are required to make this a valid marriage, though it is obvious that in the absence of witnesses proof of the marriage will be difficult. A marriage of this type can be regularised by the appearance before the Sheriff of the contracting parties with two witnesses who bear evidence to prove (*a*) that exchange of consent has taken place, (*b*) that one of the parties has been resident in Scotland for twenty-one days preceding the exchange of consent. The Sheriff then orders the marriage to be registered. This condition, that one of the parties to an irregular marriage should have resided in Scotland for twenty-one days previous to it, was introduced in 1856 to reduce the great number of irregular marriages contracted in Scotland (notably, before a blacksmith at Gretna Green) between persons resident in England.

If the parties fail to register the marriage, a Decree of Declarator must be obtained, in an action raised in the Court of Session, before their status is legalised. This may competently be done even after the death of one of the contracting parties.

Note. There are two other ways of constituting an irregular marriage which are less commonly met with.

1. By a promise of marriage, followed by connection between the parties, if the connection has been consented to only on the faith of that promise. This type of irregular marriage can be established only by an action of Declarator, and some written evidence is essential (not necessarily an actual promise in writing) to show that such a promise has been made.

2 By "Co-habitation, Habit and Repute." A marriage of this type consists in a man and woman living together for a number of years as husband and wife, provided that the woman during that period of time takes the status of wife and not merely that of mistress. Such a marriage can only be set up on an action of Declarator.

DIVORCE.

Divorce is granted in Scotland for either of two causes, Adultery or Desertion, on the part of either of the spouses.

Desertion must be malicious and persisted in for four years. The injured spouse in suing for Divorce for desertion has to depone, on oath, that the separation was without consent on the pursuer's part and that he, or she, has been willing, during the four years of desertion, to cohabit.

In some cases this operates with great injustice. The woman who has most cause for thankfulness that a brutal husband has left her has less ground for divorce than the woman who laments her husband's absence but cannot compel him to return.

Effects of Divorce.

The marriage is dissolved and both parties are free to marry again. The successful pursuer at once has right to the share of the delinquent's estate to which he or she would have succeeded had the delinquent died without leaving a will. For example, a widow is entitled to one half of her husband's moveable estate, where there are no children. If, therefore, a childless woman divorces her husband, she has right, on obtaining her decree, to one half of her said husband's moveable estate.

The custody of the children is in the discretion of the court and is generally awarded to the successful pursuer, with right of access on the part of the other parent.

Divorce proceedings have to be instituted in the Supreme Court.

Note.—

SEPARATION. A Separation order may be granted for either of two causes : cruelty or adultery.

ABSTRACT OF LECTURE

on

"The Law as it affects the Woman as Wife and Mother"

by

R. CANDLISH HENDERSON, ESQ., K.C.
Professor of Scots Law in the University of Edinburgh.

The history of the law in relation to the Woman as Wife and Mother reflects the changing mode of regarding the position of the woman after she enters into marriage.

Formerly there were two rights belonging to the husband in regard to his wife's property.

1. JUS MARITI. This referred to *moveable* property (i.e. property other than land or houses). By the *Jus Mariti* the whole moveable property of a wife passed, at marriage, to her husband. This right could be excluded. In most cases where there was considerable property it was arranged in the marriage contract that the wife should retain her moveable estate. The *Jus Mariti* was finally swept away in 1881.

2. JUS ADMINISTRATIONIS. By this right the husband at marriage became curator or administrator of his wife. She could not sue, or be sued, unless her husband was called as administrator. She could not sell, or feu her heritage (land or house property) unless her husband consented. This right was gradually curtailed. Finally it was swept away by the Married Women's Property Act (1920).

A wife may now dispose of her estate, both heritable and moveable, and is capable of contracting and incurring obligations as if she were an unmarried woman.

The 1920 Act, besides conferring rights upon a wife, imposes obligations which did not formerly fall upon her.

1. A wife who incurs an obligation is now liable to be sued as if she were unmarried.

2. If a wife now has a separate estate or income more than reasonably sufficient for her own needs, she may be required to aliment (i.e. support) her indigent husband. Formerly, a husband was obliged to aliment his wife, but there was no corresponding obligation upon the wife to aliment her husband, should he be unable to support himself. The position of the wife in this matter is now assimilated to that of the husband.

The legal position of the mother in regard to her children falls under three heads :—

1. ALIMENT. The husband and father is liable in the first place to provide aliment. The mother may be required to aliment the children, but only if the father is unable, through ill-health, or poverty, or for any other bona-fide reason, to do so.

2. CUSTODY. The common law of Scotland gives the custody of the children to the father. But the Court had the power to interfere if it could be shown that the child's health or morals would be endangered if it remained in the father's custody.

By an Act passed in 1861 it was provided that in cases of separation or divorce the Court might make provision in the final

decree for the custody, maintenance and education of the pupil children. The paramount consideration in such cases is the welfare of the children.

A further step was taken in the Guardianship of Infants' Act, 1886. The provisions of this Act have been extended by the Guardianship of Infants' Act, 1925. The leading change made by the latter Act as regards the custody of the children is that, whereas, previously, the Court in dealing with the question considered that the father was prima facie entitled to the custody, it is now enacted that the Court shall regard the welfare of the child as the paramount consideration and shall not take into consideration whether, from any other point of view, the claim of the father is superior to that of the mother. The mother may also, under the recent Act, apply to the Court for an order respecting the custody of the child and this application may be made notwithstanding that the mother is residing with the father.

3. GUARDIANSHIP. In normal circumstances the father is the guardian, with control of his children's upbringing and the administration of their affairs.

Under the Common Law the mother was never the guardian nor could she nominate a guardian. But as the law now stands since the said Act of 1925, the mother becomes, on the death of the father, guardian either alone, or jointly with the father's nominee. The mother may also nominate a guardian to act after her death. The guardian appointed by the predeceasing parent acts jointly with the surviving parent, unless the latter objects, in which case the guardian may apply to the Court. The Court may refuse to make any order or may order that the nominated guardian shall act either jointly with the surviving parent or alone. In the case of disagreement between joint guardians, application may be made to the Court for its direction.

ABSTRACT OF LECTURE

on

"The Law of Scotland affecting the Unmarried Mother and her Child"

by

The Right Hon. LORD MURRAY.

It is a well known canon of law that an illegitimate child is nobody's child (*Filius nullius*). This is, however, only partially true. There is always the mother. She is a certain fact. The father may, or may not, be a matter of uncertainty. It was not until the year 1853, that both parties to an affiliation suit were entitled to give evidence on their own behalf. Prior to that there was required only some evidence of intimacy, or familiarity, between the parties and the woman's assertion, on oath, that the man was her child's father was held as conclusive proof against him. The fact of paternity has now to be proved, like any other fact.

In many respects the law views the relation between parent and illegitimate child just as it views the relation between parent and a child born in lawful wedlock. There are, however, notable distinctions :—

1. CUSTODY. The mother has right to the custody of the illegitimate child during its early years. The law is somewhat indefinite as to the duration of the mother's right, but she has a paramount claim until the child attains the age of, at least, seven, if a boy, or ten, if a girl. The Court may extend the mother's right of custody beyond these ages, having regard always to the child's welfare. The best interest of the child whether legitimate, or illegitimate, is always the dominating factor in any decision of the Court, as to custody.

If the father offers to take custody of the child when the age of seven, or ten, as the case may be, has been reached, and the mother refuses to face the separation from her child, her refusal may be taken as relieving the father from all further liability for aliment. The Court, however, would require to be satisfied that

the father's offer was a genuine one and not merely a device to shirk his responsibilities, by playing upon the mother's fear of losing her child.

2. ALIMENT. If the paternity of the child has been established, the father and mother are jointly and equally liable for its support. Aliment covers merely the necessaries of life and bears no relation either to the means, or the social position, of the parents. For many generations, some £3 or £4 a year represented the half share of maintenance either parent could be called upon to pay. In 1919 this amount was raised, owing to the increase in the cost of living, to £11 14/- per annum, or 4/6 per week. (In England the maximum that a defaulting parent can be obliged to pay, has recently been raised from 10/- to £1 per week.)

In the event of one parent being unable to aliment the child the total liability falls upon the able parent As in the case of legitimate offspring, this liability lasts for life, provided the child is physically, or mentally, disabled from earning its own livelihood.

If the child is normal, the parents' legal responsibility ends at puberty.

Parents cannot barter, or throw off, their rights in, and responsibilities towards, their children, whether legitimate or illegitimate. If a mother enters into an agreement with a stranger, whether in respect of a money payment, or not, to hand over her child and all her rights in her child, the contract is not binding. The law does not recognise any form of adoption whatsoever.

It is to be noted that while the parents are under obligation to maintain their child, there is no corresponding obligation upon the illegitimate child to support its indigent parents. In this sense it is true that such a child is *filius nullius*.

In one instance the claims of the illegitimate child are superior to those of the legitimate child, namely:—where the supporting parent has gone bankrupt. The wife and lawful children have no claim to maintenance until all the creditors have been satisfied, but the illegitimate child is entitled to come in and rank as a creditor, along with the butcher, the baker, etc.

The illegitimate child has no claim for support upon any relatives other than its parents, unlike the lawful child which has a claim both upon ascendants and descendants.

In the absence of support from either parent, the child has a claim against the parish. The lawful child, however, follows the

settlement of the father, while the illegitimate child claims exclusively against the parish of his mother's settlement.

If either parent is wilfully neglecting to maintain the child, the relieving parish can sue for re-payment of sums spent on aliment and in the case of non-payment, can have the defaulter imprisoned. It is only in the case of a refusal on the part of a parent to pay in obedience to a Decree for Aliment (whether affecting legitimate or illegitimate children) that imprisonment for debt can be resorted to. In most cases this is ineffective as a means to enforce payment, as imprisonment wipes out the liability for the sum due.

3. GUARDIANSHIP. The mother is the guardian of the illegitimate child while it is in her custody. As the law stands, neither father nor mother is entitled to appoint a guardian to act after their respective deaths. Either may appoint a curator.

4. SUCCESSION. An illegitimate child has no right of succession, where there is no will, to the property of either his father or his mother. Where he inherits property bequeathed to him by a parent, he has to pay the same duty as a stranger.

Prior to 1836 an illegitimate child could not dispose of his own moveable estate by will. He is now in the same position, in this matter, as a child born in wedlock.

If an illegitimate child die intestate without leaving lawful issue to succeed him, his property passes to the Crown. His parents have no claim.

ABSTRACT OF LECTURE

on

"The Law of Scotland as it affects the Woman Worker"

by

A. M. MACROBERT, ESQ., K.C., M.P.

In this country there are over six million women workers, over two million of whom work on the land.

Women workers are under certain disabilities. (1) Physically they are not so strong as men. (2) There is a certain

reluctance on the part of women to enter upon apprenticeship training, because most young women workers look forward to marriage. (3) There are certain Trade Union restrictions which prevent women being employed in some industries. (4) There are certain restrictions imposed by Statute upon women workers and (5) there were also certain offices or professions which prior to 1919 were not open to women. The Sex Disqualification Removal Act, 1919, in great measure opened up these offices and professions to women, e.g. they may now become solicitors, advocates, and chartered accountants.

There are certain statutory regulations applicable to all workers. Thus regulations in favour of the health or safety of the workers, are applicable to women as well as to men.

Some special regulations, however, apply only to women.

FACTORY ACTS.

In most of the Factory Acts the woman worker is defined as a woman of eighteen years of age or more, but the Coal Mines Act, 1911, refers to women of sixteen and upwards. (In this Act there are provisions that prohibit women from working underground. Further, women working above ground at mines are not allowed to work during the night, lift heavy weights, or push railway trucks.) In most, if not all, of the Factory Acts there have been special provisions regarding women. These are found consolidated in the Act of 1901. Women are allowed to work only from 6 a.m. to 6 p.m., 7 a.m. to 7 p.m., 8 a.m. to 8 p.m., and provision is made for meal-times during these hours—(2 hours in textile, 1½ hours in non-textile factories). Women are not allowed to work more than 5 hours consecutively (4½ in textiles), without a rest of half-an-hour. Overtime is provided for but strictly regulated (not more than 2 hours in any day, nor more than 3 days in any week being permitted). Exceptions are made as regards creameries and trade in fruit, fish and other perishable goods. No overtime may be worked on Saturday, and the hours of work on Saturday must not exceed 5 in textile, or 8 in non-textile factories, with two hours for meals. No woman may be employed on Sunday, except in creameries where they may work for 3 hours. Certain public holidays must also be given. No woman may clean machinery in motion, nor be employed in certain dangerous and unhealthy

industries, such as silvering mirrors. Young girls may not work at smelting, glass enamelling, making bricks, or salt. No woman may be employed within 4 weeks after childbirth.

The Factory and Workshop Act, 1907, introduced longer hours for Laundries, viz., from 6 a.m. to 7 p.m., 7 a.m. to 8 p.m. or 8 a.m. to 9 p.m., if no work is done on Saturday, but the total hours of work must not exceed 68 in one week. Home work is also regulated to a certain extent. A list of out-workers must be kept for inspection ; no woman may be employed both outside and inside a factory on the same day ; piece workers must have a written contract with particulars of their work and wages.

The Police, Factories, Miscellaneous Provisions Act, 1916, authorises the Secretary of State to make welfare orders requiring provision of seats, facilities for washing, drinking-water, cloakrooms, etc., in particular industries. Provision of canteens for herring-curers is made compulsory.

The Employment of Women, Young Persons and Children Act, 1920, makes a general provision that no woman shall be employed at night in any industrial undertaking, with certain exceptions where those employed all belong to one family, or where night work is necessary to prevent deterioration of the article manufactured. This Act also gives permission for special orders to be executed for factories which apply for them, allowing women to work in two 8 hours shifts between 6 a.m. and 10 p.m. These orders can only be made out at the request of a majority of the employers and workers in the industry, and special conditions may be imposed, e.g. appointment of welfare worker, provision of cloakrooms, transport home, etc.

Under the Women and Young Persons (Employment in Lead Processes) Act, 1920, there are provisions to the effect that women are not to be employed in certain work in connection with lead ; nor are they allowed to clean workshops where these processes are carried on. (These two Acts arose out of the Conventions of the International Labour Conference at Washington in 1919.)

The Trade Boards Acts, 1909, 1913, 1921, play an important part in the State regulation of women's work. These Boards consist partly of equal numbers of the employers and employed in the industry concerned and partly of certain

"appointed members" unconnected with the trade. Their duty is to fix minimum rates of wages and enforce their application. They may also set up advisory District Committees and employ inspectors. A Trade Board is appointed by the Ministry of Labour, generally after a public inquiry, when he is convinced that a Board is needed in a special industry.

The Shops' Act, 1912, does not specially affect women, except that there must be a seat provided in each room for every three women employed.

PROFESSIONS.

With regard to the professions, women teachers are in the same position as male teachers, except as to remuneration. Nurses must now be registered (Registration of Nurses Act, 1919). Women may now become solicitors and advocates. They may hold any civil or judicial office. They may carry on a civil profession or business. They are liable to be summoned as jurors. (See the Sex Disqualification Removal Act, 1919).

In former days married women were not entirely free to dispose of their own property, nor could they carry on business or work without their husbands' consent. A married woman could not come under a personal obligation except as regards her own estate. Her person was never liable. The old law has been gradually altered and modified. To-day a married women is practically in the same position as an unmarried woman. The husband's right of administration and curatorial power has been taken away, and a married woman may dispose of her property, may enter into contracts, incur obligations, sue and be sued as if she were not married. This change in the law has been effected by the Conjugal Rights Act, 1861, the Married Women's Property Act, 1877, the Married Women's Property Act, 1881, and by the recent Act of 1920.

ABSTRACT OF LECTURE
on
"The Law as it affects the Unemployed Woman"
by

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The laws dealing with unemployment make no great differentiation between men and women.

Towards the beginning of this century a realisation of the risks attached to unemployment, resulting largely from modern industrial conditions, and the need for meeting or mitigating these risks by legislation, gave rise to the Labour Exchanges Act of 1909 and National Insurance (Unemployment) Acts, 1911—1919, repealed and superseded by the Unemployment Insurance Acts, 1920—25.

Under the provisions of the Labour Exchanges Act:—

1. The administration (which was, at first in charge of the Board of Trade, later, of the Ministry of Labour) was empowered to open up a network of Employment Exchanges throughout the country. There are now about 380 of these Exchanges of which 49 are in Scotland. Through this means labour requirements are known and satisfied, as suitably and speedily as possible.
2. General industrial information, for both employers and workpeople, and reliable labour statistics, are always available.
3. The machinery necessary for working a compulsory and contributory National Unemployment Insurance Scheme was set up.
4. Advisory Committees (later including Women's Sub-Committees) were formed to keep the Department in touch with the public.
5. The interests of juveniles were safe-guarded.

In 1910—12 a limited National Unemployment Insurance Scheme came into force, but the real basis of the present scheme of compulsory and contributory insurance against unemployment is the *Unemployment Insurance Act of 1920.*

This Act seeks to provide unemployed persons of 16 years and over, engaged in manual occupation, or earning less than £250 per annum, with an insurance against enforced unemployment.

Agricultural labourers and domestic workers in private service, sick-nurses and those employed in certain pensionable occupations, are excepted.

Workers, their employers and the state contribute jointly to a central Unemployment Fund.

The present weekly contributions paid are as follows:—1/7 for a man, 1/3 for a woman, 9½d. for a boy and 8½d. for a girl. *Note*—(Since the new scheme of Widows' Pensions etc. Insurance has come into operation from January, 1926, the above contributions have been reduced, as follows:—men 1/3, women 1/1, boys 7½d., girls 6½d).

The weekly amounts now payable in benefit are as follows:—18/- for a man, 15/- for a woman, 7/6 for a boy, and 6/- for a girl. These amounts have, since 1921, been supplemented by dependant's benefit, at the following rates—5/- for a wife, invalid husband, or dependant widowed mother, and 2/- for each child under 14 (or under 16, if in attendance upon a day-school).

In the preceding insurance year, 20 contributions, and in the previous two insurance years, 30 contributions, must have been paid before a contributor qualifies for benefit This is known as *Standard* benefit, and the number of weeks during which benefit can be drawn depends upon the number of contributions paid. One week's benefit is available during unemployment, for every six contributions paid when in employment,—up to a maximum of 26 weeks Standard Benefit in any one individual Benefit year.

The above provisions were quite inadequate for the abnormal increase of unemployment, during the years that immediately succeeded the coming into operation of the 1920 Act. Several emergency Acts were passed to meet the case of the thousands of insured persons with few contributions to their credit.

Uncovenanted, now known as *Extended*, benefit was introduced. This is equal in money value to Standard benefit but is granted on special conditions to contributors who do not possess the qualifying number of contributions or who have exhausted the amount of Standard benefit due them.

In every case, however, the claimant for extended benefit must show :—

1. A reasonable amount of insurable employment (having regard to all the circumstances) during the period preceding the claim.
2. That insurable work is her normal means of livelihood.
3. That she would be likely to obtain such work in normal times, also that she is making reasonable efforts to obtain work.

Abuse is guarded against by certain conditions and disqualifications, affecting all claimants to either Standard or Extended Benefit. Persons already in receipt of pensions, such as Old Age or Blind Persons Pensions, are not eligible for benefit.

If the claimant has either (*a*) been discharged through her own fault, or (*b*) has thrown up her work without good reason, she is disqualified for a period not exceeding six weeks. If she is unemployed through stoppage of work, due to a trade dispute, in which she is participating, she is disqualified as long as the dispute lasts (provided it has not arisen through the employer contravening an agreement).

If the claimant refuses suitable work, her benefit is stopped.

The claimant must be capable of, and available for, work and be genuinely seeking, but unable to obtain, suitable employment. The claimant who fails in these conditions may be subject to a six weeks' disallowance and further review to see if the conditions still fail at the end of that time. The claimant for extended benefit is subjected to stiffer tests as to her (1) willingness to accept suitable work of any kind, (2) efforts to obtain work and likelihood of success in these efforts.

309,000 women and 44,900 girls in Scotland were recorded in July, 1924, as having obtained yearly unemployment books.

The primary machine for the operating of the Act is the Employment Exchange which issues new unemployed books annually, in July, to all insured contributors. Stamps representing weekly contributions paid, have been affixed to these books. When the worker falls out of employment, her book is lodged with the Exchange. Her claim is then tested by reference to her last employer and the state of her account examined. Work is offered where possible. Benefit is calculated and paid to her through the Exchange. There is very

adequate machinery for dealing with disputed claims.

The Minister of Labour refers applications for Extended Benefit to the Advisory Committees (already referred to), for their recommendations as to the grant of benefit in accordance with the Statutory conditions. Women applicants are dealt with by the Women's Sub-Committees and interviewed in Rota Committees (three members forming a Rota). During 1923, these voluntary helpers dealt with $2\frac{3}{4}$ million cases throughout Great Britain.

Under the Poor Law Emergency Provisions (Scotland) Act of 1921, poor relief may be granted to destitute able-bodied persons unable to obtain employment.

Two further Acts require mention as extending the opportunities of obtaining employment :—

1. *The Trade Facilities Act*, by which the Government gives financial assistance to approved works giving employment in this country.

2 *The Empire Settlement Act of* 1922 which furthers the emigration of British subjects (particularly, as far as women are concerned, of household workers) to employment in the Dominions.

ABSTRACT OF LECTURE
on
"The Scottish Law of Inheritance"
by
The Hon. LORD CONSTABLE.

Succession may be either Intestate (where there is no will) or Testate (by will).

Intestate Succession.

The rules of intestate succession are derived from the common law but have been considerably modified by modern legislation. The general principle is that intestate succession is founded on blood relationship. The rules of succession vary considerably according to whether the succession relates to heritable property (which includes land and other real rights) or to moveable property (which includes all other forms of property). The general rules which govern all intestate succession are as follows :—

1. Property is inherited along certain lines of consanguinity.

Descendants (sons, daughters and their descendants) have the first claim. Failing descendants, the succession goes collaterally to brothers, sisters and their descendants. If there are neither descendants nor collaterals, the succession finally follows the line of ascent to father, uncles, aunts, grandfather, etc.

2. Full-blood relationships exclude the half-blood, i.e. relatives by the same father and mother exclude relatives by the same father but not by the same mother.

3 Though property, both heritable and moveable, may *descend* to, or through, a female, it can never *ascend* to, or through, a female. For example:—If a man die, survived by one daughter, his daughter and, after her, her descendants will succeed. The property descends through a female. On the other hand, if a man die, survived only by his mother, she does not succeed to him except to a limited extent under modern legislation; or, if a man die survived only by uncles and aunts on both his father's side and his mother's, his father's brothers and sisters succeed, to the exclusion of the mother's brothers and sisters. Keeping in view these three main principles affecting all succession, the distinctive features of succession in (1) Heritable and (2) Moveable property are:—

(1) HERITABLE.—There are three distinguishing rules applicable to succession to heritable estate.

(*a*) The rule of *Preference of Males* to Females. The male is always preferred to the female. As long as there is any male member of a family, the females are wholly excluded.

(*b*) The rule of *Primogeniture.*—By the rule of primogeniture, the eldest son is always preferred. There is an exception to this rule where, failing a male heir, the property falls to females. In that case there is equal division. For example, if a landed proprietor dies intestate leaving a family of sons and daughters, the eldest son inherits, to the exclusion of all his sisters and brothers. If there is no son, but daughters, the daughters share equally among them.

The application of these two rules in the line of collateral succession should be noted. Suppose a member of a family of brothers dies without children, his heritable property goes first to his immediately younger brother, failing him, to the next younger, and so on to the youngest. If there are no younger brothers so that the property cannot descend, it goes to the immediately older brother, failing him, to the next older, and so on to the eldest.

(*c*) The rule of *Representation*—The rule of representation is

observed. That is to say, should the eldest son have predeceased his father, his place is taken by *his* eldest son, to the exclusion of his (the original heir's) brother next in age.

Two important exceptions to these general rules governing intestate succession in heritable property have to be noted

1. A widow has a right to the life-rent of one third of her husband's landed property. This is called Terce.
2. In the same way, the widower has right to the life-rent of his wife's landed estate, but the widower's is a life-rent, not merely of one third but of the whole property. This right is called Courtesy: and neither Terce nor Courtesy can be defeated by will.

(2.) MOVEABLE.—As regards intestate succession in moveable property, we have to note two main features which distinguish it, broadly speaking, from the above.

(*a*) There is no preference of the male to the female. If a man die leaving no will, survived by a family of sons and daughters, the property is divided equally among his children, irrespective of sex.

(*b*) There is no rule of primogeniture. The eldest son takes an equal share with each of his brothers and sisters.

Originally there was no representation recognised in succession to moveables. If a man died leaving a family of two sons and two daughters, one son and one daughter having predeceased their father and left children, under the old law, these grandchildren had no claim. In 1855, however, the rule of representation was introduced into succession to moveable estate, and under this rule, the division of the above estate would be as follows:—Each son and daughter would succeed to a one sixth share, the shares of the deceased son and daughter being divided equally among their respective families.

Material modifications have been made, by Statute, upon the rules of intestate succession, fixed by the Common Law. For example:—in terms of the 1855 Act,

1. If a man dies leaving no family, his father succeeds to one half of his moveable estate, and if the father has predeceased, the mother takes one third, in preference to the brothers and sisters.
2. If a man dies leaving only half-sisters and half-brothers by the same mother, these half-sisters and half-brothers uterine succeed to a one-half share.
3. In 1911 it was provided that when a husband died intestate

leaving no children, the widow should be absolutely entitled to £500, (unless the estate was not worth so much). That is to say, that out of the whole estate the widow takes £500, in addition to any rights proper to her under the old common law as regards the remainder of the property.

4. By the Act of 1919, the mother was placed in the same position as the father, in the case where a son or daughter had died intestate leaving no issue. If the father has predeceased, the mother now takes one half.

There remain to be noted certain special rules which operate between married persons and their children. If one of the spouses dies leaving no family, the moveable estate of the predeceaser is divided into two, one half going to the surviving spouse and the other half to the next of kin. The share taken by the surviving spouse is called the *jus relictæ* or *jus relicti*. If, on the other hand, there are children of the marriage the moveable estate of the predeceaser is divided into three, one-third going to the surviving spouse, one third to the children, and one third to the next of kin. The share taken by the children is called *legitim*. Neither the spouses *jus relictæ or jus relicti*, nor the children's legitim, can be defeated by will.

Testate Succession.

As regards testate succession the leading principle is freedom of bequest. There are certain restrictions, but generally speaking, a man may leave his property as he wills (subject to the fact that the State by death duties etc., now deprives him of all control over a large portion).

In the case of heritable estate the restrictions are :—

(*a*) The restriction imposed by the rights of terce and courtesy, already referred to, which the old law conferred on the surviving spouse, in regard to landed estate possessed by the deceased partner.

(*b*) The limitation imposed by the law of entail which virtually deprived owners of entailed estate of all power of disposal whatsoever. Successive Acts of Legislation during last century opened the door to disentail proceedings being carried out and the power to make a new entail was abolished in 1914.

In the case of moveable estate the restrictions on freedom of bequest consist of the rights to *jus relictæ*, *jus relicti* and *legitim* above explained.

Most of the rights above explained and also the freedom of bequest may be curtailed, or excluded, by marriage contracts.