A plat recorded in 1921 showed a 100-foot road designated as "private" running in an easterly direction, which was the only legal means of entrance and exit to the subdivision. There was at the time of such recording a dwelling house entirely within the limits of the 100-foot road and on the northerly side of a 20-foot strip in the center thereof on which a concrete roadway was later constructed. The plaintiffs purchased residence property under a deed conveying land to the south line of the 100-foot road. It appeared that the public had acquired no rights by user except over the 20-foot concrete strip, and there was never any dedication of the 100-foot road as a public highway nor any legal acceptance thereof by the town board. The circuit court did not abuse its discretion in vacating all of that portion of the plat described in the plaintiffs' deed except the 20-foot concrete strip, under its authority in this section to vacate a portion of a plat except only such parts as have been dedicated to and accepted by the public for use as a street or highway. In re Vacating Plat of Chiwaukee, 254 W 273, 36 NW (2d) 61.

236.43 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.43; 1957 c. 245; 1961 c. 216; 1963 c. 258.

Legislative Council Note, 1955: This section is intended to be a restatement of part of s. 236.18 and s. 236.17 (2). (Bill 20-S)

236.44 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.44.

Legislative Council Note, 1955: This section is the same as the last sentence of present s. 236.18 except that it states that the applicant must be responsible for recording the order while the present statute does not make it clear who is supposed to do that. The proposal also provides for the recording of the altered plat when the plat is altered by the order. (Bill 20-S)

236.445 History: 1921 c. 590 s. 93; Stats. 1921 s. 59.08 (4a); 1951 c. 662; 1955 c. 651; Stats. 1955 s. 236.445.

236.45 History: 1955 c. 570 s. 4; 1955 c. 652; Stats. 1955 s. 236.45; 1957 c. 610; 1959 c. 671; 1965 c. 252, 646; 1967 c. 211 s. 21 (1); 1969 c. 285 s. 28.

Legislative Council Note, 1955: This section is very similar to the present s. 236.143, except that it clearly spells out the power of the local unit of government to regulate divisions of land into less than 5 parcels and into parcels larger than 1½ acres. In proposed sub. (2) the procedure relating to divisions into less than 5 lots is set forth and divisions which the local government cannot control are specified.

Under sub. (3) the subdivision regulations apply in any area where the municipality, town or county has the right to approve or object to plats. It must be remembered that under s. 236.13 where those regulations conflict, the more restrictive apply. This provision is a change from the present law in regard to county regulations which requires the town to approve the county regulations before they can apply in the town.

Sub. (4) is similar to present procedure except that it specifies the amount of notice required and requires the ordinance to be published in form suitable for public distribution. This provision is quite common in subdivision statutes and ordinances and seemed desirable. (Bill 20-S)

Where a so-called "subdivision platting" ordinance of a village was, in effect, a zoning ordinance more restrictive as to lot-size requirements than an existing county zoning ordinance, and where the affected land was in an area in litigation in annexation proceedings, the village board could not enforce its ordinance by rejecting a plat, since 59.97 (4a), Stats. 1957, declared that in such situation the county zoning ordinance should prevail. State ex rel. Albert Realty Co. v. Village Board, 7 W (2d) 93, 95 NW (2d) 808.

236.45 was intended by the legislature to invest additional authority in those municipalities which had created planning commissions to impose further requirements upon the subdivider. Jordan v. Menomonee Falls, 28 W (2d) 608, 137 NW (2d) 442.

236.46 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.46; 1965 c. 252.

Legislative Council Note, 1955: This is the same as present s. 236.14, except it has been broadened to include all counties which desire to adopt regional plans and not just Milwaukee county. Sub. (1) (b) is new and applies only outside Milwaukee county. It requires that a municipality must approve the regional plan before it can apply in the extraterritorial plat approval jurisdiction of the municipality. (Bill 20-S)

236.50 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.50.

Legislative Council Note, 1955: Sub. (1) is self-explanatory. July 1, 1956, was chosen as the effective date in order to insure that 1955 statute books containing the revised chapter would be available when it went into effect.

Sub. (2) is intended principally to clear up difficulties caused by the provision in present s. 236.06 (3) that any plat not approved by the bodies required by the statutes to approve or not accompanied by proper evidence of its approval or not recorded within the 90-day time limit is invalid. Under this provision a plat approved by a city council, but accompanied by a certificate of the city clerk that it had been approved instead of a copy of the resolution as required by chapter 236 would be invalid. This type of technical error has caused much concern to title examiners. (Bill 20-S)

CHAPTER 237.

Descent.

Editor's Notes: (1) The original statutory provisions on the subject of descent were borrowed from the laws of Massachusetts and, before they were enacted here, received judicial construction in that state.

The legislative histories which follow are the histories of the several sections of ch. 237 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 237 are restated in a new probate code, effective April 1, 1971. For more detailed information

concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

237.01 History: R. S. 1849 c. 63 s. 1; R. S. 1858 c. 92 s. 1; 1868 c. 61; 1870 c. 121; 1874 c. 164; R. S. 1878 s. 2270; 1883 c. 219; Ann. Stats. 1889 s. 2270; 1893 c. 23; Stats. 1898 s. 2270; 1925 c. 4, 106; Stats. 1925 s. 237.01; 1941 c. 290; 1943 c. 316; 1959 c. 406; 1969 c. 339.

On inherent rights see notes to sec. 1, art. I; and on wills see notes to various sections of ch. 238.

On the death of a minor child the surviving brothers and sisters take his share of his deceased parents' estate as heirs of the parent. Wiesner v. Zaun, 39 W 188.

Sec. 1 (7) and (8), ch. 92, R. S. 1858, does not apply to a case where the ancestor leaves only one child who dies under age and unmarried. Estate of Kirkendall, 43 W 167.

The testator, his son J. and the wife and 3 children of the latter perished by a fire which consumed the testator's house. The evidence, showing the arrangement of the house, the probable origin of the fire, the location of the bodies, etc., sustained the finding that the testator died first and J. before his wife and children. In re Ehle, 73 W 445, 41 NW 627.

Sec. 2270 (5), Stats. 1917, providing that, on the death of an unmarried minor, property descending to him from a deceased parent shall go to the other children of the same parent, and not to a parent, as provided by sec. 2270 (2), is in the nature of an exception to the general purpose of the statutes of descent, which is that intestate estate shall, where no other provision is made, descend to the next of kin of the deceased irrespective of whether it is ancestral estate. The words "parent" and "child" as used in sec. 2270 (5) should not be construed as including grandparents or grandchildren, even though, without such inclusion, ancestral estate will descend to a stranger to the blood of the ancestor. Estate of Spooner, 172 W 174, 177 NW 598.

On the application of the doctrine of equitable conversion to the descend of real property see Estate of Bisbee, 177 W 77, 187 NW 653.

Under a will providing for a division of the residue of testator's estate among designated legatees if the estate amounted to more than the total sum of specific bequests, all of the estate not passing under such bequests, including the amount of a bequest to the testator's son who died during the testator's lifetime, would go to the residuary legatees, rather than to the testator's heirs at law as intestate property. Estate of Radcliffe, 194 W 330, 216 NW 501.

If lands which have been sold for taxes escheat, the state merely succeeds to the right of redemption. State v. Gether Co. 203 W 311, 234 NW 331.

Nieces and nephews of a decedent and constituting his next of kin take per capita rather than by right of representation. Schneider v. Payne, 205 W 235, 237 NW 103.

A will creating a trust directed that the income be paid to a daughter of the testator, and that upon her death the principal be paid to her "issue." The daughter died leaving surviving a son, and children and grandchildren of a deceased daughter. The issue of the daughter of the testator took per stirpes and not per capita. Will of Morawetz, 214 W 595, 254 NW 345.

A will creating a trust directed that income be paid to the testatrix' only son for life and upon his death to his wife, but the remainder was not disposed of in case the son died childless and was survived by a wife alone. On the happening of that event testatrix died intestate as to such remainder and the son's wife took it as the son's only heir. Where one person had the sole life interest in a trust by will and took the remainder by inheritance, a merger resulted which terminated the trust. Will of Fitton, 218 W 63, 259 NW 718.

"Heirs at law" means the same as "next of kin," except that "heirs at law" denotes the blood relatives who inherit the real property of an intestate whereas "next of kin" denotes the blood relatives who inherit the personal property of an intestate. The trial court was in error in attempting to differentiate and classify a surviving sister and brother as "next of kin" and a surviving niece and nephew as "heirs" of the testator, when all 4 were at the same time both next of kin and heirs at law of the testator. Will of Bray, 260 W 9, 49 NW (2d) 716.

No statutes of descent are involved in the devolution of property held in joint tenancy, since the devolution of such property is an incident of joint tenancy, and the property does not pass to the survivor by inheritance nor according to any laws of descent. Estate of King, 261 W 266, 52 NW (2d) 885.

By virtue of 237.01 (3), the surviving adopted child of a predeceased sister of an intestate, whose nearest surviving relative was another sister, acquired the inheritance rights which the adoptive mother would have had if such mother had survived the intestate. (Estate of Holcombe, 259 W 642, followed; Estate of Bradley, 185 W 393, and Estate of Matzke, 250 W 204, distinguished as construing earlier statute differently worded.) Estate of Nelson, 266 W 617, 64 NW (2d) 406.

Under 237.01 (4) when an intestate is survived only by a first cousin and by second cousins who are children of a predeceased first cousin, the surviving first cousin inherits all of the intestate's estate to the exclusion of the second cousins' right to inherit the share their parent would have taken had he survived. Estate of Szaczywka, 270 W 238, 70 NW (2d) 600.

See note to 238.02, citing Will of Wilson, 5 W (2d) 178, 92 NW (2d) 282.

A testator bequeathed money in trust to be invested in lands in the names of 6 grandchildren, to be conveyed to and vested in them in fee simple, directing that, in case of the death of any of said grandchildren, the share of the child so dying should go to and vest in his or her surviving brothers or sisters. After the lands were purchased and deeds made conveying them in fee simple to the grandchildren as tenants in common, one of the grandchildren died intestate, unmarried and without issue. The undivided interest of deceased in the lands passed to the grandchild's father. Wood v. Denny, 1 Biss. 73, Fed. Cas. No. 17942.

Real estate escheats to the state immediately upon death under 237.01 (7) and 318.03 (4), Stats. 1967, and such property is exempt

from the general property tax. 56 Atty. Gen. 228.

Statute of descent and distribution. 1940 WLR 590.

237.02 History: 1864 c. 270 s. 2; R. S. 1878 s. 2271; 1883 c. 301; Ann. Stats. 1889 s. 2271; Stats. 1898 s. 2271; 1917 c. 552; 1925 c. 4; Stats. 1925 s. 237.02; 1943 c. 316; 1949 c. 245; 1951 c. 727 s. 23h; 1969 c. 339.

A wife driven from her home by her husband's cruelty does not thereby lose any of her homestead rights. Keyes v. Scanlan, 63 W 345, 23 NW 570.

So long as a widow's homestead estate exists her husband's heir is not seized of the land. Seizin (possession) is in the widow. Therefore the heir's widow has no dower in the land covered by such homestead. Dudley v. Dudley, 76 W 567, 45 NW 602.

The husband has power, without the consent of his wife, to devise his homestead to one of his children. Whitmore v. Hay, 85 W 240, 248, 55 NW 708.

The widow's life estate is not subject to partition. Voelz v. Voelz, 88 W 461, 60 NW 707.

A statement in a will that "after my just debts and funeral expenses have been paid I give" does not charge the homestead with such debts. Kuener v. Prohl, 119 W 487, 97 NW 201.

Sec. 2271, Stats. 1898, abrogates the common-law right to a vendor's lien upon the homestead. Berger v. Berger, 104 W 282, 80 NW 585; Schmidt v. Schmidt's Estate, 123 W 295, 101 NW 678.

The homestead of an insane ward who dies leaving no widow or issue is chargeable with his support and maintenance during life. Johnson v. Door County, 158 W 10, 147 NW 1011.

Under sec. 2271, Stats. 1915, when a person dies intestate as to his homestead, leaving a widow and issue, his issue take at the time of his death a vested estate therein subject to the conditional life estate of the widow. Lands of Christianson, 161 W 611, 155 NW 115.

A life tenant of a homestead is entitled to possession, rents and profits, and bound to pay taxes and provide repairs during life. In the absence of contrary evidence, payment of taxes and repairs by one of the remaindermen was assumed to have been intended as a contribution to her mother, collectible, if at all, out of the mother's estate, not by enforcing contribution by the other remaindermen. A devise by one of the remaindermen of her one-fifth interest in the homestead to her mother did not make the mother a tenant in common with the other remaindermen, because equity will prevent a merger of a lesser in a higher title where that would be unjust and diminish the resulting value of the life tenant's interest. Nixon v. Nixon, 184 W 200, 199 NW 50.

See note to section 235.01, on conveyance of homestead, citing Krueger v. Groth, 190 W 387, 209 NW 772.

City property of an area of less than one quarter of an acre, on the front of which was a residence occupied by the decedent during his lifetime, and on the rear of which was a building the lower part of which was used by the decedent for the storage of automobiles and equipment for carrying on his business, and the upper part of which was rented for living quarters, constituted his "homestead." Will of Bresnahan, 221 W 51, 266 NW 93.

A homestead which descended to the adult son and sole surviving heir of the owner was not subject to the deceased owner's "debts and liabilities" so as to entitle the administrator of the deceased owner's estate, under 312.04, to the possession of the homestead or the rent thereof. Curtis v. Gillie, 239 W 207, 300 NW 911.

The widow's dower and homestead rights, which came to her on the decedent's death, could not be used by the tortfeasor to offset the widow's pecuniary damages caused by the death. Schmutzler v. Brandenberg, 240 W 6, 1 NW (2d) 775.

237.025 History: 1949 c. 245; Stats. 1949 s. 237.025; 1969 c. 339.

237.03 History: R. S. 1849 c. 63 s. 4; R. S. 1858 c. 92 s. 4; R. S. 1878 s. 2272; Stats. 1898 s. 2272; 1925 c. 4; Stats. 1925 s. 237.03; 1969 c. 339.

Sec. 4, ch. 63, R. S. 1849, abolished the common-law distinction between kindred of the whole and of the half blood in the distribution of an estate which came not by descent, devise or gift from an ancestor. McCracken v. Rogers, 6 W 278.

The words "unless," etc., do not establish a general rule of inheritance, but merely a particular exception to the right of children of the half blood defined in the previous clause; and the person who is next of kin of the full blood of the intestate takes the inheritance, though not of the blood of the ancestor from whom it came to such intestate. Estate of Kirkendall, 43 W 167.

The method of computing degrees of kindred in the direct line is the same in the civil as in the common law; the difference arises only where the consanguinity is collateral. Brown v. Baraboo, 90 W 151, 62 NW 921.

237.03 providing that kindred of the half blood shall inherit equally with those of the whole blood "in the same degree" unless the inheritance came to the intestate from one of his ancestors, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance, abolished all distinction between the rights as to inheritance of kindred of the half blood and kindred of the whole blood, except as applied to ancestral property. Estate of Curtiss, 245 W 311, 13 NW (2d) 917.

The words "in the same degree", as used in 237.03, were not meant to limit the rights of lineal descendents of the half blood to take only when of equal degree with the other lineal descendants, and do not indicate an intention to deprive lineal descendants of a deceased half brother of an intestate, leaving nonancestral property, from taking by representation under 237.01 (3). Estate of Curtiss, 245 W 311, 13 NW (2d) 917.

A cousin of an intestate is one degree nearer of kin than is a cousin's child. Estate of Szaczywka, 270 W 238, 70 NW (2d) 600.

237.04 History: 1882 c. 222; Ann. Stats. 1889 s. 2272a; Stats. 1898 s. 2272a; 1925 c. 4; Stats. 1925 s. 237.04; 1933 c. 159 s. 30; 1957 c. 97; 1969 c. 339.

On effect of adoption see notes to 48.92.

237.05 History: R. S. 1849 c. 63 s. 3; R. S. 1858 c. 92 s. 3; R. S. 1878 s. 2273; Stats. 1898 s. 2273; 1925 c. 4; Stats. 1925 s. 237.05; 1957 c. 296 s. 15; 1969 c. 339.

237.06 History: R. S. 1849 c. 63 s. 2; R. S. 1858 c. 92 s. 2; R. S. 1858 c. 111 s. 30; R. S. 1878 s. 2274; Stats. 1898 s. 2274; 1915 c. 258; 1917 c. 218 s. 2; 1925 c. 4; Stats. 1925 s. 237.06; 1943 c. 275 s. 58; 1953 c. 31 s. 43; 1957 c. 296 s. 15; 1969 c. 339.

A child born in wedlock of a marriage which is null and void is nevertheless the legitimate heir of both parents. The most conclusive and clearest proof of nonaccess of the husband is required to bastardize and disinherit a child so born. Watts v. Owens, 62 W 512, 22 NW 720.

The written acknowledgment of paternity need not have been made for the express purpose of establishing heirship or of complying with the statute, if it does in fact meet the statutory requirements. It need not be in precise formal language, but is sufficient if it declares with reasonable clearness and certainty that paternity of the child is acknowledged. Richmond v. Taylor, 151 W 633, 139 NW 435.

Evidence that the contestant in administration proceedings was received by the intestate as his son, lived as a member of his family until marriage, and afterward resided in the same neighborhood, the natural family relationship continuing until the death of the intestate, was sufficient to prove that contestant was such son without formal adoption or written acknowledgment. A contract properly witnessed, entered into jointly by contestant and the intestate with one S., stating that they, the intestate "and son," were purchasers from S., and a certain written order by the intestate for the delivery of goods "to my son," naming contestant, constituted sufficient acknowledgment. Estate of Ecker, 174 W 432, 182 NW 977.

Under the statute relating to the heirship of an illegitimate child, its paternity must be acknowledged under such facts and circumstances as to lead to a reasonable conclusion that the person making the acknowledgment is in fact the natural father of the child. Estate of Dexheimer, 197 W 145, 221 NW 737.

The legal presumption that devises to children are to legitimate children is rebutted by the fact that the testator must have intended that illegitimate children would take. In re Kaufer's Will, 203 W 299, 234 NW 504.

The evidence in this case sustained a finding that the illegitimate daughter of the decedent was acknowledged by him. Estate of Bailey, 205 W 648, 238 NW 845.

Where a decedent had been adjudged to be the father of 2 illegitimate children in illegitimacy proceedings, such illegitimate children were "heirs" of the decedent, so that they would have inherited his estate if he had died intestate. Will of Tousey, 260 W 150, 50 NW (2d) 454.

See note to 137.01, citing Estate of Schalla, 2 W (2d) 38, 86 NW (2d) 5.

Where decedent had denied paternity of a child, but agreed to support it, and later pleaded guilty on preliminary examination on a charge of failing to support "his illegitimate minor child" but the action was dismissed on motion of the district attorney because paternity had not been determined, the plea was not sufficiently a clear and unequivocal admission of paternity to permit the child to inherit. Estate of Traver, 18 W (2d) 416, 118 NW (2d) 932.

For an illegitimate child to become an heir of the father, it is necessary under 237.06 that one of 3 conditions be met: that the father acknowledge in writing paternity in the presence of a competent witness; that he be adjudged the father in a paternity action; or that he admit such paternity in open court. Krantz v. Harris, 40 W (2d) 709, 162 NW (2d) 628.

237.07 History: R. S. 1849 c. 63 s. 12; R. S. 1858 c. 92 s. 12; R. S. 1878 s. 2275; Stats. 1898 s. 2275; 1925 c. 4; Stats. 1925 s. 237.07; 1969 c. 339.

237.07, Stats. 1947, does not apply to a statute which does not provide for descent by right of representation but restricts descent to "next of kin in equal degree," as in 237.01 (4). Estate of Szaczywka, 270 W 238, 70 NW (2d) 600.

237.08 History: R. S. 1849 c. 63 s. 10, 11; R. S. 1858 c. 92 s. 11; R. S. 1878 s. 2276; Stats. 1898 s. 2276; 1925 c. 4; Stats. 1925 s. 237.08; 1969 c. 339.

237.09 History: 1887 c. 192; 1889 c. 227; Ann. Stats. 1889 s. 2276a; 1893 c. 28; Stats. 1898 s. 2276a; 1909 c. 196; 1913 c. 486; 1925 c. 4; Stats. 1925 s. 237.09; 1929 c. 321; 1951 c. 250; Sup. Ct. Order, 262 W vi; 1969 c. 339.

Editor's Note: See 1952 comment of Judicial Council under 327.28.

237.10 History: 1941 c. 284; Stats. 1941 s. 237.10; 1955 c. 505; 1969 c. 339.

Editor's Note: For foreign decisions construing the "Uniform Simultaneous Death Act" consult Uniform Laws, Annotated.

237.11 History: 1943 c. 369; Stats. 1943 s. 237.11; 1969 c. 339.

CHAPTER 238.

Wills.

238.01 History: R. S. 1849 c. 66 s. 1; R. S. 1858 c. 97 s. 1; 1859 c. 91 s. 2; 1870 c. 3 s. 1; R. S. 1878 s. 2277; Stats. 1898 s. 2277; 1925 c. 4; Stats. 1925 s. 238.01; 1943 c. 11, effective Jan. 1, 1942; 1969 c. 339.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 238 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 238 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

1. General.
2. Competency.
3. Undue influence.

1. General.

On inherent rights see notes to sec. 1, art. I;