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 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 Chippewa, 254 W 273, 36 NW (2d) 61. 236.43 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.43; 1957 c. 246; 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. 236.19 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)

236.45 History: 1921 c. 590 s. 93; Stats. 1921 s. 84.06 (4a); 1951 c. 802; 1955 c. 651; Stats. 1955 s. 236.45. 236.45 History: 1955 c. 570 s. 4; 1955 c. 652; Stats. 1955 s. 236.45; 1957 c. 610; 1967 c. 671; 1965 c. 252, 646; 1977 c. 211 s. 21 (1); 1979 c. 262 s. 28. Legislative Council Note. 1955: This section is very similar to the present s. 236.14, 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 89.97 (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 68, 90 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 subdividers. Jordan v. Menomonee Falls, 29 W 2d 596, 137 NW (2d) 442. 236.48 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.48; 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 230 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
considering the effects of ch. 338, 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. 1868 c. 92 s. 1; 1866 c. 3; 1870 c. 121; 1874 c. 164; R. S. 1878 c. 2270; 1883 c. 219; Ann. Stats. 1889 s. 2270; 1892 c. 23; Stats. 1896 c. 2270; 1925 c. 4, 196; Stats. 1925 s. 337.01; 1941 c. 269; 1943 c. 316; 1959 c. 406; 1969 c. 339.

On inherent rights see notes to sec. 1, art. 1; 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 the deceased parent's estate as heirs of the parent. Wiesner v. Zahl, 29 W 108.

Sec. 1 (7) and (8), ch. 32, 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 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 Etho, 72 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 386.

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

Under a will providing for a division of the residuary 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 heir at law as intestate property. Estate of Radcliffe, 194 W 330, 215 NW 591.

If lands which have been sold for taxes escheat, the state merely succeeds to the right of redemption. State v. Gethers Co. 208 W 311, 234 NW 381.

Nieces and nephews of a deceased and constituting his next of kin take per capita rather than by right of representation. Schneider v. Payne, 235 W 23, 237 NW 100.

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 Morawets, 214 W 596, 204 NW 345.
from the general property tax. 56 Atty. Gen. 221.

237.02 Statute of descent and distribution. 1940 WLR 590.

237.02 History: 1884 c. 270 s. 2; R. S. 1870 s. 2711; 1889 c. 361; Ann. Stats. 1889 s. 2711; Stats. 1896 s. 2711; 1917 c. 532; 1925 c. 4; Stats. 1945 s. 237.02; 1949 s. 216; 1949 c. 245; 1851 c. 727 s. 236; 1899 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 454, 93 NW 570.

So long as a widow's homestead estate exists her husband's heirs is not seized of the land. Selsin (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 603.

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 766.

The widow's life estate is not subject to partition. Voels v. Voels, 86 W 461, 68 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 590.

Sec. 2271, Stats. 1898, abrogates the common-law right to a vendor's lien upon 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 603.

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The widow's life estate is not subject to partition. Voels v. Voels, 86 W 461, 68 NW 707.
237.05 History: R. S. 1849 c. 63 s. 1; R. S. 1858 c. 92 s. 3; R. S. 1868 c. 2276; Stats. 1898 s. 2277; 1925 c. 4; Stats. 1932 s. 237.05; 1955 c. 237.05.

On a charge of failing to support “his illegitimate minor child” but the action was dismissed on motion of the district attorney because the action was not supported by evidence appearing on the face of the records. 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, 116 NW (2d) 932.

For an illegitimate child to become heir of the father, it is necessary under 237.05 that one or more 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, 49 W (2d) 766, 136 NW (2d) 639.

237.06 History: R. S. 1849 c. 63 s. 12; R. S. 1858 c. 92 s. 12; R. S. 1878 c. 2276; Stats. 1898 c. 2276; 1925 c. 4; Stats. 1932 s. 237.06; 1949 c. 330.

The evidence in this case sustained a finding that illegitimate children would take. In re Kaufer’s Will, 191 W (2d) 704, 465 NW (2d) 400.

237.07 History: R. S. 1849 c. 63 s. 10; 11; R. S. 1868 c. 92 s. 11; R. S. 1878 c. 2276; Stats. 1898 s. 2276; 1923 c. 4; Stats. 1925 s. 237.07; 1949 c. 330.

Estate of Snyder, 18 W 299, 234 NW (2d) 104.

237.08 History: R. S. 1849 c. 63 s. 10; 11; R. S. 1868 c. 92 s. 11; R. S. 1878 c. 2276; Stats. 1898 s. 2276; 1923 c. 4; Stats. 1925 s. 237.08; 1969 c. 330.

237.09 History: 1878 c. 192; 1899 c. 237; Ann. Stats. 1889 s. 2276; 1899 c. 28; Stats. 1898 c. 2276; 1909 c. 196; 1918 c. 406; 1925 c. 4; Stats. 1925 s. 237.08; 1929 c. 201; 1929 c. 250; Sup. Ct. Order, 362 W (2d) 967; 1959.

Editor’s Notes: See 1952 comment of Judicial Council under 237.08.

237.10 History: 1941 c. 284; Stats. 1941 s. 237; 1955 c. 563; 1969 c. 330.

Editor’s Notes: 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. 330.

CHAPTER 238.

Wills.

238.01 History: R. S. 1849 c. 66 s. 1; R. S. 1858 c. 97 s. 1; 1869 c. 91 s. 2; 1870 c. 3 s. 1; R. S. 1878 c. 2277; Stats. 1898 s. 2277; 1925 c. 4; Stats. 1925 s. 238.01; 1943 c. 11, effective Jan. 1, 1942; 1969 c. 330.

Editor’s Notes: The legislative histories which follow are the histories of the several sections of ch. 238 through 1969, including the effect 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 regarding the effects of ch. 339, Laws 1969, see the editor’s note printed in that volume ahead of the histories for ch. 331.

1. General.
2. Competency.
3. Undue Influence.

1. General.

On inherent rights see note to sec. 1, art. I.