EFFECT OF THE MICHIGAN LAWS OF DESCENT AND DISTRIBUTION UPON THE OWNERSHIP AND OPERATION OF FARM LAND

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EFFECT OF THE MICHIGAN LAWS OF DESCENT AND DISTRIBUTION UPON THE OWNERSHIP AND OPERATION OF FARM LAND

A THESIS

By

Harold H. Ellis

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Introduction

Various methods of transferring the ownership of our nation's farms to the suceeding generation have been in use for decades. In recent years, however, they have received increasingly more attention from research workers. This increased attention has been based, at least in part, on the supposition that the method of transfer provides one possible clue to the prevalence or nonprevalence of owner-operatorship and the family-size farm -- two long recognized goals in our national agricultural policy. Contrariwise, the transfer method employed may contribute to soil exploitation, inefficient land use, lack of maintenance and improvement, the periodic breaking up of farms as going concerns, insecurity for farm parents or children, inequitable treatment of parents or children, relatively high court costs, legal fees, taxes, and other costs, and other possibly undesirable economic and social consequences.

A farm owner may enter into a variety of legal arrangements to transfer his farm and farm property to the succeeding generation. Frequently, however, farm ownership is transferred without the owner's having made any arrangement to do so. This occurs when he has died intestate; i.e., without leaving a valid will, and without having made any other legal arrangement for disposing of his farm and farm property. When this happens the farm real estate becomes subject to state laws of descent, and farm personal property to laws of distribution. For various

reasons, it is commonly believed, and has often been stated, that such a situation is usually undesirable. [1] In keeping with this view, a number of research studies have been concerned with the various legal arrangements which a farm owner may make to transfer his farm and farm property to the succeeding generation.[2] Moreover, educational efforts have been undertaken to encourage farm owners to enter into some type of farm transfer arrangement prior to death.[3] Nevertheless, little factual information has been assembled concerning what actually happens when no such arrangements have been made and farm land is transferred by intestate death of the owner.[4]

1/ See, for example, Beal, G. M. Farm Property Ownership and Disposition of Estates in Maryland. Md. Agr. Ext. Bul. 121, 20 pp., College Park, 1948 and Parsons, K. H. and Legrid, C. J. Planning for the Descent of Property in the Family. Wis. Agr. Ext. Cir. 364, 24 pp, Madison, 1945.

2/ Three recent studies of this type are reported in: Eckhardt, A. G., Family Farm Operating and Transfer Arrangements. 298 pp., J. D. Thesis, Univ. of Wis., 1950. Myers, M., Keeping your Farm in the Family. 24 pp., S. Dak. Agr. Exp. Sta. Bul. 398, Brookings, 1950. Berry, R. L., Henderson S., and Hill, E. B., How to Keep Your Farm in the Family. 41 pp., Mich. Agr. Exp. Sta. Spec. Bul. 357, E. Lansing, 1949.

3/ For a recent extension bulletin of this type see: Harris, M. and Hill, E. B., Family Farm - Transfer Arrangements. 39 pp., Ill. Agr. Ext. Cir. 680, (N. Cent. Reg. Pub. 18) Urbana, 1951.

4/ A notable exception to this statement is a study reported in: Walrath, A. J. and Gibson, W. L., Jr., Farm Inheritance and Settlement of Estates, Va. Agr. Exp. Sta. Bul. 413. 32 pp., Blacksburg, 1948.

Since the number of such intestate transfers of farm land and farm personal property is probably substantial (and may continue so in spite of the above-mentioned educational efforts), it is important to know what actually happens in such cases and what improvements may be needed. This requires an analysis of 1) the laws of descent and distribution. 2) how these laws operate in actual practice, and 3) what effect this has upon farm ownership and operation. The satisfaction of these three requirements provided the central objectives of the study upon which this thesis is based. It was also deemed advisable to acquire, for comparative purposes, certain information concerning the actual operation and effect of the testate method of transfering farm ownership on death, i.e., under provisions of a valid will.

The study began with an analysis, through library research, of the Michigan laws of descent and distribution, and related laws pertinent to our inquiry - including statutes, court decisions and constitutional provisions. This constituted my attack upon objective 1, and the results are reported in Part I. Objectives 2 and 3, being closely related, were largely attacked together. For reasons which will be discussed later, it was determined to make a historical study of Orange Township, in Ionia County and to augment this with current information obtained in Ionia and other counties. Historical information was obtained on such questions as the time taken to settle estates and the costs involved, the length of time that farm land remained held in

undivided ownership among two or more heirs, how it was operated during such period, the extent of parcellation or consolidation of ownership and operating units, and who finally acquired ownership and operation. A more detailed discussion of the research procedures employed will unfold along with the report of the study. The study made in Ionia County was augmented by interviews with probate judges and other persons in Ionia and various other counties in Central Michigan to throw further light upon how the laws have operated, and to find out how they are currently operating, in actual practice. The results of this part of the study are reported in Part II.

Part I THE LAW IN THE BOOKS

The present Michigan statutory law governing the descent and distribution of deceased's estates took substantially its present form when the statutes of descent and distribution, and certain related and additional laws, were reorganized, codified and in certain respects modified by the enactment of the Probate Code of 1939. While not all of the statutory law with which we are here concerned is embodied in the code, a substantial proportion is. This thus facilitates our efforts to track down the law pertinent to our inquiry. There is also, of course, constitutional and court-made, or "case", law to be considered. The most notable Michigan constitutional provision for us to consider is the homestead exemption. Case law considered will be of two types: 1. interpretations of statutory or constitutional law. 2. pronouncements as to the law with respect to certain matters not covered by statutory or constitutional law - for example, much of the law regulating rights and duties of heirs with respect to real estate they hold in common following settlement of a deceased's estate. Case law for our purpose, is to be found only in the written reported opinions of the higher courts. In Michigan this is limited to the reported opinions of its Supreme Court. In our following discussion of the law we shall usually not distinguish whether the particular provision under consideration consists of statutory, constitutional or case law, or some

combination thereof. This can be ascertained, however, by referring to the legal citations which are contained in Appendix II.

HISTORICAL NOTES

With no pretense of completeness, we shall set forth some of the historical changes in the law as currently found in the books, particularly changes in statutory law.

The present Michigan law of descent of real estate is substantially that passed by the Legislature in 1909. Prior to that time the widow's interest in her deceased husband's real estate had been limited to dower and homestead rights. Since then she has been provided a definite share of the real estate along with other heirs, with the right to elect to take her dower and homestead rights in lieu thereof.[1] She has since become specifically entitled to remain in the dwelling house of her deceased husband for one year rent free (this is called the widow's quarantine). The husband first began to share as an heir in the real estate of his deceased wife in 1931.[2]

Sale of real estate during settlement of an estate for the purpose of paying the deceased's debts had been an innovation of 1782. Later, in 1909, it was provided that realty could also be sold for the purpose of making distribution of the estate to the heirs. Various attempts have been made to make identical the rules for the descent of real estate and the distribution of personalty. But this has never been attained. At least one writer has complained that there is no good reason, for example, for an

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1/ For this and following legal citations refer to the corresponding number in Appendix II., List of Legal Citations for Part I.

only child to inherit 2/3 of the real estate of his father's when the widow has survived, but only 1/2 of his personalty. He wrote that a "growing demand to make the law of inheritance as to realty and personalty the same seems to insure such legislation in the near future." [3]

The widow for sometime has been entitled to a certain reasonable allowance for the sustenance of herself and minor children. However, the source of the allowance had at first been restricted to personal property and only the income from real estate. The source has since been expanded to include the whole estate.[4]

The question of the administrator's right or duty to take possession of the deceased's real estate during settlement of the estate has had quite a history.[5] There have been several variations. At one time the administrator was given authority to take possession of the real estate only on obtaining an order from the court, and it had been held by the courts that he had the right to take possession only when necessary to pay debts. At another time, the administrator might in his descretion take possession without an order of court. It was held, however, that where an heir entered into possession with the administrator's consent his possession could not be lawfully disturbed unless it appeared necessary that the realty must be used to pay debts.[6] The present provision requires the administrator to take possession of the real estate immediately upon his appointment, though he may allow a lease of the property to continue, or make

other arrangements for its use and occupancy.

In 1947 the Legislature passed the Community Property Act, effective July 1, 1947, creating a new form of acquisition and ownership of property between husband and wife.[7] All property of every kind acquired by either husband or wife, or both, after marriage, or on or after July 1, 1947, with certain important exceptions, would be deemed their community property, each having an undivided 1/2 interest therein which would pass to the heirs of each upon his or her death, with certain exceptions and modifications. Separate property acquired by either before marriage, or after marriage, by gift, inheritance, (whether under a will, or laws of descent and distribution) or as compensation for personal injuries, and property derived from such property, would not become community property. This act was repealed the next year, with saving provisions. Therefore, while it is possible that a husband or wife may presently hold some property as community property by reason of this act, the chances are rather remote, for most persons. This is so especially because the repealing act provided that all rights of community property acquired under the former act would be extinguished unless a claim were filed with the Register of Deeds within one year from the effective date of the repealing act, i.e., by May 10, 1949. The validity of the provision barring such previously acquired rights in this manner has been considered to be somewhat doubtful by at least one writer.[8] In any event, we shall consider the subject of community property to be largely unimportant for purposes of our present inquiry, and shall accord-

ingly not mention it again.

While certain allowable estate costs, such as witness and publication fees, have been raised in recent years, the rate of the administrator's allowable commissions have remained unchanged since 1915, the judge may (since 1947) allow him a commission on the real estate, whether or not it is sold in the process of settlement. While several changes have been made in the Michigan inheritance tax law, the rates of tax have not been changed since 1935, nor does any substantial change appear to have been made in exemptions since said date.

PRESENT LAWS

The Michigan statutes include specific provisions for the disposition of a deseased person's real and personal property (which together constitute his "estate") in the event he (or she) has died intestate, i.e. without a valid and enforceable will. These statutes include the statutes of descent of real estate and distribution of personalty, and related laws.

Our primary concern, for the purposes of this study, is with the disposition of a deceased's property under the laws of descent and distribution in cases where he has made no legal arrangements to alter the disposition that the laws would make. Accordingly, we shall not inquire into the cases where the title to his real estate was held in "joint tenancy" with someone else (or in "tenancy by the entireties" with his spouse.) For in this event, his interest would automatically terminate on his death, allowing the property to pass to the surviving co-owner or owners by right of survivorship. Nor will we be concerned with cases where he had previously made a contract for the sale or other disposition of his property which may be enforced against his estate -- even though in all these cases, the deceased has died intestate. We shall not, however, rule out cases where his property was held in undivided ownership with some other person or persons as "tenants in common," for in this event his undivided interest does not cease on his death and is disposed of under the laws of descent and distribution and, of course, we will be concerned with cases where he held full title

to property on his death.

The Statutes of Descent and Distribution

The descent and distribution of the property of a person dying intestate is governed by the statutory provisions in effect at the time of death.[9]

The deceased's real estate, or any inheritable interest therein (which many include an undivided fractional interest as tenant in common with other owners) descends on his death to his heirs at law as provided in the statute of descent, subject, however, to the following: 1. If there is a widow her right to elect to take her dower and homestead rights in lieu of the share otherwise provided for her (discussed later) 2. Any other charges which may be legally imposed thereon, including payment of debts, expenses of administering the estate, the widow's quarantine, and allowances to the widow and minor children, also discussed later.[10] Although the personal property shall be used first to satisfy these charges, if it is insufficient the real estate may be resorted to.[11]

The deceased's personal property, or any inheritable interest therein, shall first have been applied as follows: 1. The widow, if any, shall be allowed all the apparel and ornaments of herself and the wearing apparel, ornaments, and household furniture of the deceased. 2. She is also entitled to select other personal property not over $200 in value. 3. The balance remains subject to the payment of any other charges

which may legally be imposed thereon, including payment of debts expenses of administering the estate, and allowances to the widow and minor children. The residue, if any, shall be distributed to those entitled thereto under the statute of distribution.[12]

The statutes of descent and distribution provide that the real estate and personal property of the deceased who leaves no valid will shall go, subject to the above mentioned limitations, to certain persons or classes of persons, and in certain designated proportions. For example, it is provided that if the deceased died leaving a widow, or surviving husband, and "issue", his real estate shall descend 1/3 to the widow or surviving husband and the remaining 2/3 to the issue; if leaving no widow or surviving husband, but issue, the whole to the issue, and if all issue are in the same "degree of kindred" to the deceased they share the estate equally, otherwise according to the "right of representation". And so on and on.[13]

It is thus apparent that to be understandable a few of the words employed in these statutes must be further defined. The word "issue" is deemed to include all the lawful lineal descendants of the deceased.[14] Lineal descendants include such relatives as stand in a direct line of descent from the deceased - children grandchildren, and so on. The word "children", where specifically employed in these statutes, does not include grandchildren.[15]

Inheritance by "right of representation" means that the lineal descendants of any deceased heir take the same share that

their parents or respective parents would have taken if living. Posthumous children are considered as living at the death of their parents.[16] This applies, also, to the immediate children of the deceased.

"Degree of kindred" as employed above to describe the deceased's issue, contemplates that his children are the first degree, his grandchildren the second degree, and his great grandchildren the third degree. In the provision referred to above if, for example, all of the deceased's issue are children they share equally. If, however, they consist of children and two grandchildren, being the children of a deceased child, the two grandchildren would share the share that their parent would have taken if living (by right of representation).

In many instances the statutes have classified heirs by designation of relationship rather than by degrees of kindred. For example, parents, widow, husband, brother and sister. When the estate passes to such designated relatives it does so because they stand in any certain degree of kindred. Degrees of kindred shall be resorted to only where it is expressly so provided.[17]

In the event the deceased leaves no issue, husband or wife, nor parents, it is provided that all his real estate goes to brothers and sisters and children (though not grandchildren) of deceased brothers and sisters, and if such persons are in the same degree of kindred to the deceased they take equally, other wise by right of representation (with certain qualifications where the deceased died under the age of 21), Where there are

no such persons, all is to go to his next of kin in equal degree (with one exception). If no kindred, then all "escheats" to the state for use of the primary school fund.

Degrees of kindred or kin ship have to be precisely determined. In the latter situations described above, we were concerned with "collateral kindred of the deceased." That is, kindred not in a direct line of descent or ascent from him, but deriving kinship through some common ancestor. For example - father or mother, in the case of brothers and sisters. We would also be concerned with grandparents, great grandparents, etc. who are themselves the common ancestor. The law provides that degrees of kinship shall be computed according to the rules of the civil law,[18] which is to begin at the person claiming relationship and count up to the common ancestor and then downwards to the deceased in a lineal or direct course, calling it a degree for each person both ascending and descending.[19] The statute provides further that in determining who are the "next of kin in equal degree," that with respect to those claiming relationship through different common ancestors with the deceased, those claiming through the nearest ancestor shall be referred.[20] Thus, although an uncle and nephew both stand in the third degree of kinship, the nephew takes to the exclusion of the uncle, since the common ancestor in his case is the deceased's father, where as in the uncle's case it is the grandfather, the uncle's a more distant common ancestor,[21] The following list of classes of relationship indicates the order in which various next of kin inherit:

1. Grandparents
2. Nephews and nieces
3. Uncles and Aunts
4. Great - grandparents
5. Grandnephews and nieces
6. First cousins
7. Grand uncles and aunts
8. Great - great - grandparents
9. Children of grandnephews and nieces
10. Children of first cousins
11. Children of granduncles and aunts
12. Great - granduncles and aunts.[22]

Each of these classes takes in the order stated to the exclusion of all subsequent classes. For example if first cousins are the nearest relatives they take to the exclusion of all others.

Following is a listing of the more common situations and the disposition of the real and personal property under each. Each situation is classified according to nearest surviving relatives of the deceased. "Spouse", of course, includes either wife or husband.

1. Spouse and one child (or issue of such deceased child)

Real Estate

1/3 to spouse, 2/3 to child or his issue, by right of representation.

Personalty

1/2 to spouse, 1/2 to child or his issue, by right of representation

2. Spouse and more than one child (or one child and issue of a deceased child or children.)

Real Estate

1/3 to spouse, 2/3 equally to children or issue of deceased children, by right of representation

Personalty

Same as real estate

3. Spouse and grandchildren who are the issue of more than one deceased child (but no children)

Real Estate

1/3 to spouse and 2/3 to grandchildren equally

Personalty

1/3 to spouse and 2/3 to grandchildren, by right of representation.

4. Spouse and parent ar parents (but no issue)

Real Estate

1/2 to spouse, 1/2 to parents equally or to a sole surviving parent.

Personalty

If a deceased man, the first $3,000 goes to the widow, and any surplus goes 1/2 to her, 1/2 to the parents equally, or to a sole surviving parent. If a deceased woman, same as real estate.

5. Spouse and one or more brothers and sisters (but no issue, parents, or issue of deceased brothers and sisters)

Real Estate

1/2 to spouse, 1/2 equally to brothers and sisters.

Personalty

If a deceased man, the first $3000 to the widow, any surplus 1/2 to the widow and 1/2 equally to brothers and sisters. If a deceased woman, same as real estate.

6. Spouse and one or more brothers and sisters and issue of deceased brothers and sisters (but no issue or parents)

Real Estate

1/2 to spouse and 1/2 equally to brothers and sisters and issue of deceased brothers and sisters if in same degree of kindred, otherwise by right of representation.

Personalty

If a deceased man, the first $3000 to the widow, any surplus 1/2 to the widow, 1/2 equally to brothers and sisters and issue of deceased brothers and sisters if in same degree of kindred, otherwise by right of representation. If a deceased woman, same as real estate.

7. Spouse (but no parents, brother, or sister, nor issue of deceased brothers or sisters).

Real Estate

All to spouse

Personalty

Same as real estate.

8. One or more issue (including children) but no spouse

Real Estate

Whole to issue in equal shares if all are in same degree of kindred, otherwise by right of representation.

Personalty

Same as real estate.

9. Parent or parents (but no spouse or issue)

Real Estate

All equally to parents, or whole to sole surviving parent.

Personalty

Same as real estate

10. One or more brothers and sisters and issue of deceased brothers and sisters (but no issue, spouse, or parents)

Real Estate

All equally to brothers and sisters and children of deceased brothers and sisters if in the same degree of kindred, otherwise by right of representation (grand-nephews and nieces do not take)

Personalty

Same as real estate.

Except that, in the case of real estate, if the deceased dies under 21 and has not been married, so much of his real estate as came to him by inheritance from a parent goes to the other children, and children of deceased children, of said parent, equally if in the same degree

of kindred, otherwise by right of representation (grandnephews and nieces do not take).

11. Next of kin (but no issue, parents, brothers and sisters or children of deceased brother and sisters).

Real Estate

All to (nearest) next of kin in equal degree.

Personalty

Same as real estate.

12. No known relatives

Real Estate

All escheats to state.

Personalty

Same as real estate.[23]

Stepchildren, a stepfather or stepmother, or relatives by marriage, other than husband or wife, do not inherit either real estate or personalty. Kindred of the half blood inherit equally with those of the whole blood in the same degree, except that where the inheritance comes to the deceased by inheritance (with or without a will) or gift of some one of his ancestors, those who are not of the blood of such ancestor are excluded from the inheritance.[24] But this exception applies only when there are more than one kindred in the same nearest degree.[25]

An adopted child shall become heir at law of the adopting parent or parents and entitled to inherit property as though

he were their natural child, in accordance with the Michigan law of descent and distribution (though he is not entitled to inherit from kindred of adopting parents.)[26] This shall not affect his right to inherit from or through his natural parents.[27] Conversely, the adopting parent or parents are entitled to inherit as though natural parents,[28] except for real estate (of an adopted child dying without issue and not descending to husband or wife) which has come to the adopted child from his natural parent or parents.[29] An adopted child doesn't inherit from kindred of an adopting parent. Kindred of adopting parents may inherit an adopted child's property, but not his real estate.[30]

An illegitimate child shall be considered an heir of his mother and may inherit as representing his mother any part of the estate of any of his mother's kindred, whether lineal or collateral.[31] Conversely, If he dies without issue such part of his estate as doesn't descend to a husband or wife descends to his mother or, if dead, to his relatives on her side, as if he were legitimate.[32] If his parents have later married after his birth an illegitimate child is by law considered legitimate for all purposes,[33] or if without such later marriage the father and mother (or the father alone) have acknowledged him to be the child of the father, and have recorded said acknowledgment.[34] However, an illegitimate son has been held to be barred from inheriting from his mother whom he murdered for this express purpose. The court said that the object of the statute of descent and distribution is

to provide for the devolution of estates among those whom the Legislature conceived to be the natural objects of the deceased's bounty.[35] It is provided that no husband or wife shall inherit from his spouse if he was at the time of death living with another person in a bigamous relation.[36]

Where the inheritance of property depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived.[37]

Although it has been held that an heir may, by contract made prior to the deceased's death, renounce his right to claim a share in the deceased's estate and take an advancement as his share, there appears to be no definite law in Michigan concerning an heir's right to renounce his share in the estate after the deceased's death. A leading legal treatise on the law in the various states of the Union asserts that he may do so.[38] The question may arise especially where there is an existing mortgage or a lien for delinquent taxes on real estate, since heirs take the realty subject to any encumbrances thereon. They can receive no greater estate in realty than the deceased had.[39] However, this is not to say that an interest may not exist in such land superior to a creditor's rights. For widow's dower and homestead rights, the widow's quarantine, and the charge upon the land to pay her and minor children an allowance, are just such rights (other such rights include expenses of administering the estate).

Widow's and Minor Children's Rights

With respect to real estate

1. Dower. The widow of every deceased person shall be entitled to dower, i.e., the use during her natural life, of a 1/3 part of all the lands her husband held an inheritable estate in at any time during the marriage, unless she is lawfully barred therof.[40] Thus she may have dower in, say, the undivided 1/8 interest he may have owned as a tenant in common with other persons. Her "inchoate" dower is said to become consummate on his death.[41] The widow may hold dower in mortgaged real estate, entitling her to redeem from any foreclosure.[42] While dower rights are subservient to any mortgage existing at the time of marriage, dower attaches to any surplus that may be realized from foreclosure.[43] Even if she has joined in her husband's mortgage after marriage it has been held that her dower isn't barred since the mortgage doesn't pass legal title. Her dower is merely subjected to the mortgage lien.[44] If a purchase money mortgage has been given after marriage, even though she has not joined in, her dower is subservent to the mortgage lien. In any case, however, if the mortgage is foreclosed she is entitled to interest or income from 1/3 of the surplus for life as her dower.[45]

We shall find later that dower may be assigned to the widow either as the use of a 1/3 part, quality and quantity being considered, for life, or as 1/3 of the rents and profits of the whole tract (providing, of course, her husband held

full title to the whole).

The widow may also have dower rights in lands previously conveyed away by her husband if she had not joined in the deed, though her dower will be barred if she has not filed a claim to protect same within 25 years from the date of the conveyance.[46]

The widow's dower in land owned by the deceased on death could have been barred prior to marriage by antenuptial pecuniary provisions, or by a "jointure" made for her benefit in lieu of dower, if made with her assent. The "jointure" constitutes a life estate to take effect on the husband's death, in lieu of dower.[47]

While the husband of a deceased woman is in some states given "curtesy" rights, similar to dower, such rights are not given a husband under Michigan law.

2. Homestead The Michigan constitution provides that every homestead owned and occupied by a resident, consisting of not over 40 acres (if in the country) with the dwelling thereon, not exceeding $2,500, in value, shall be exempt from any forced sale on execution to satisfy a debt, or other final process of court, with certain qualifications. This exemption shall continue after his death during the life of the widow, or until her remarriage, even though there be no such children. During this time she is entitled to occupy the premises or have the rents and profits therefrom, unless she has a homestead in her own right. This homestead exemption has been held not to

attach to property in which the deceased held only a fraction -except for certain modifications where real estate does not exceed the amount of the exemption.[48] She could have barred her homestead rights (with certain exceptions) in substantially the same manner employed to bar her dower. We shall see that the homestead may be sold, after certain protective precautions have been exercised, if necessary to pay debts and expenses of administration, but up to $2,500 of the proceeds must be reinvested, and remains exempt from execution.

If the widow elects to take dower and homestead rights, in lieu of her distributive share as an heir of the real estate, she takes what she is thereby awarded free of all creditors except for mortgages on the property when homestead rights were acquired, and certain other mortgages (already discussed) in the case of dower. She must be given notice of her right to make this election, thus giving her a better insight into her rights and causing her to study the affairs of the estate more carefully.[49]

A widow who has never resided in Michigan is not entitled to homestead rights in Michigan real estate, though entitled to dower in lands which her husband owned on death (though not in lands conveyed away before death).[50]

3. Widow's quarantine. The widow is entitled to remain in the dwelling house of her husband rent free for one year after his death. This right is called the widow's quarantine.[51]

With respect to personalty.

The widow shall be allowed articles of apparel and ornaments and her deceased husband's articles of wearing apparel and ornaments, as well as his household furniture. In addition, she is entitled to select other personalty, including farm personalty, not exceeding $200 in value.[52]

Allowances for Widow and Minor Children.

The following allowances are a charge upon the entire estate, both realty and personalty.

1. The widow and minor children constituting the family of a deceased man may be allowed such reasonable allowance as deemed necessary for their maintenance and support during settlement of the estate until their distributive shares are assigned to them (but in no event for more than a year in an insolvent estate).

2. If after all claims and expenses have been paid, an allowance may be provided for children under 16 until they reach that age.[53]

Distinction Between Real and Personal Property

The disposition of a deceased owner's property has been shown to depend, in the first place, upon whether it is real estate or personal property. As we turn our attention to the procedure by which estates are settled we shall see further applications of the distinction between realty and personalty. We shall therefore find it useful to examine how the law distinguishes between these two types of property.

In general, real estate includes (for our purposes) farm land and everything which is so attached thereto as to be considered by law to be a part of the land itself. It includes permanent buildings and fences. Whether it includes more temporary structures and other improvements, or equipment attached to the permanent buildings, depends largely upon the individual circumstances. A general guide to follow is that everything which is so attached to the real estate as to be incapable of removal without substantial injury thereto is to be considered real estate. The Michigan courts have gone further to say that whatever is affixed to a building by an owner to facilitate its use and occupation becomes a part of the real estate even though capable of removal without injury to the building.[54] This same rule would not, however, apply to equipment attached by a tenant. Equipment annexed to real estate may remain personalty with rspect to same parties and become part of the real estate as to others.[55]

While growing crops aren't treated as personalty for all purposes, they are so treated under the Probate Code, for such purposes as descent and distribution, payment of debts, and widow's rights.[56]

Personalty includes movables not attached to the real estate, including livestock and machinery, and, as we have seen, may include some other articles which are attached to the realty. It also includes cash, such intangible assets as stocks or bonds, and debts owed to the deceased.

Procedure in Settlement of Estates

Jurisdiction.

If the deceased was a resident of Michigan on death, the probate court of the county of residence is the proper court in which to administer (or probate) the estate. This is so even though the deceased left real or personal property in some other Michigan county. The probate court also has jurisdiction of any estate left in its county to be administered, where the deceased died residing outside the state. Administration of such an estate would be termed "ancillary" to any "principal" administration of the deceased's estate in the state, territory or county in which he resided on death. Conversely, if the deceased died a resident of Michigan but leaving an estate, whether realty or personalty, outside the state, such other state, territory, or county would have jurisdiction for purposes of ancillary administration therein. The residue of any such estate would be returned to the administrator in Michigan for final disposition.

The judge of probate has jurisdiction over all matters relating to settlement of estates of deceased persons, subject to the above limitations. This includes, among other things, jurisdiction to grant letters of administration and to appoint guardians to represent the interests of minors and other persons.[57]

Chronological Outline of Settlement Procedure

In attempting to analyze the procedure by which estates are settled it will be useful to begin with a chronological outline. Many of the steps listed below, and related matters, will later be discussed, roughly in the order listed (though with some variation to prevent duplication of certain subjects). The order of listing is not iron clad in all respects, but serves to demonstrate the usual steps providing by law. Orders referred to are orders of the probate judge.

1. Petition for appointment of administrator
2. Order for hearing, date and notice thereon
3. Publish, mail or serve notice of hearing
4. File proof of publication, mailing or service of notice of hearing.
5. Testimony at hearing
6. Order entered appointing administrator and fixing amount of bond.
7. Administrator files bond
8. Letters of administration issued
9. Administrator collects assets and files inventory
10. Exercise of widow's right of selection, and widow's and minor childrens allowances may be made.
11. Order entered and published limiting time for filing claims.
12. Order limiting settlement of estate and appointing appraisers.
13. Warrant to appraisers, property appraised, and inventory and

appraisal filed.

14. Notice to widow to make election and file proof of service of said notice.

15. Hearing on claims, claims allowed or disallowed (or order referring contested claims to referee, report of referee, order confirming denying or modifying report of referee) and order on claims.

16. Claims paid out of personalty

17. Widow's election and rights determined

18. Real estate sold if necessary to pay debts and expenses of administration, or for purposes of distribution.

19. Taxes as certained and determined, including income, Federal estate, Michigan inheritance and intangibles taxes.

20. Additional allowance for minor children under 16 may be made.

21. Administrator files final account

22. Order for publication of final account, publication, and proof filed.

23. Hearing had, testimony taken

24 Order determining inheritance tax

25. Order allowing final account determing heirs, and assigning residue and decree of partitian (on request)

26. Distribution and filing of receipts for payment of taxes and from heirs for distributive shares.

27. Order discharging administrator and cancelling bond.[58]

Some of the above steps may be waived by those for whose

benefit they are provided. For example, publication is absolutely required only for the hearing on claims and the hearing on the final account, and only in the latter case, if real estate is involved.

There is no set time limit for opening an estate, though creditors or others may see that it is opened if those given priority to open the estate fail to do so within 30 days. If publication is waived by those entitled to notice of hearing on the appointment of the administrator, he may be appointed in short order, otherwise 3 weekly publications may be required by the judge. The order appointing him shall require him to file bond within 15 days. If the bond is approved he then is issued letters of administration and required to file an inventory of all property within 30 days. Moreover, as soon as the administrator's bond is approved the judge must set a date for hearing claims against the estate, to be not under 2 nor over 4 months from the first of the 3 weekly publications required. Where real estate is involved there must be 3 weekly publications, once again, on the hearing on the final account.

It would thus appear that the minimum time to settle an estate in which real estate is involved would be 3 to 4 months (except perhaps where all real estate has been sold under license of court in the process of settlement). The judge may require that settlement be made within a certain time. The law provides that the estate shall be closed as promptly as possible (unless for good cause shown the court extends the

time therefore) but not exceeding 10 years, except for certain unusual circumstances. Administrators, as officers of the court, shall be held in strict account for prompt and expeditious termination thereof.[59]

Persons Entitled to File Petition for Appointment of Administrator

The order of priority is: Widow, husband, or next of kin, or a grantee of the interest of one or more of them. If they neglect for 30 days after the deceased's death to apply for administration, or to request administration be granted to some other person, one or more of the principal credit ors may file such petition, or any person who has a right or cause of action which can't be enforced without administration.

The petition shall include, among other things, the estimated value of real and personal property and the name, age, residence, and relationship of each heir at law.[60]

When a petition for appointment of an administrator is filed the judge must cause notice of the time and place of hearing on this matter to be published, or otherwise given, though this may be waived with the consent of all heirs.[61]

Persons Entitled to be Administrator

The statutes provide that administration may be granted to one or more of the following persons, respectively entitled to administration in the following order; Widow, husband, or next of kin, or a grantee of the interest of one or more of them, as the judge may think proper, or such person or persons

as they may request to have appointed, if "suitable and competent." If they, or those selected by them, are unsuitable or incompetent, administration may be granted to some other person or persons as the judge may think proper.

Provided that no person may be appointed administrator who is a creditor or has an interest conflicting with the interests of the estate, except that the payment of funeral expenses or expenses of last illness by a member of the immediate family shall not bar such person from acting as administrator.[62] Also, no one may act as administrator who is not a Michigan resident and a United States citizen, except for a non-resident bank or trust company authorized to do business in Michigan.[63]

The words "suitable and competent", in the above provisions giving the widow first preference, do not mean by comparison with the business knowledge and abilty of someone else who may be better qualified. A good mind, sound judgement, a knowledge of values of property, and the practical business transactions of life are sufficient to satisfy this requirement. All presumptions are in favor of the one to whom the law has given preference. The surviving widow is given priority not only among relatives who may be appointed, but also among those who may request appointment of some other person. Some discretion lies in the probate judge, but where the presumption as to competency of the widow was confirmed by evidence that she was an educated woman of intelligence and ability, a probate

court had been held by the Michigan Supreme Court to have exceeded its jurisdiction in appointing a son as administrator. The court stated, however, that the appointment is in the discretion of the probate court where an issue of fact is raised as to the widow's competency because of unsound mind, lack of normal understanding or average intelligence, intemperance, dishonesty or want of integrity, or dissolute habits or other disqualifying moral delinquencies.[64]

In a later case, the Supreme Court held the appointment of a disinterested person as administrator to be proper under the circumstances. Where the widow and other heirs were in dispute over the property, showed lack of confidence in the honesty of each other, engaged in mutual accusations of attempting to gain material advantage from the estate, and court held that the nominee of any one of them might properly be held "unsuitable" because his appointment would likely cause dissension and further litigation to the injury of the estate. The statutes are designed to protect the best interests of the estate.[65]

In case the surviving widow dies before applying for administration, her priority to be administrator does not descend upon the administrator of her own estate but to the next one or ones in line.[66]

Bond of Administrator

The administrator is required to file a bond within 15 days after the court has entered an order appointing him, with

the following conditions to be fulfilled:

1. To collect, care for, manage and preserve all the property of the estate, and file within 30 days a true and perfect inventory of all the real and personal property of said estate, which shall come to his possession or knowledge, or to the possession of any other person for him.

2. To administer the same according to law, and out of it to pay and discharge all debts and charges as ordered by the court.

3. To render a true and just account within one year and otherwise as required by law or court.

4. To perform all orders and decrees of the probate court to be performed by him and to pay over the residue of the estate to the proper parties as ordered by the court.[67]

The bond is required because the administrator is a fiduciary placed in a position of trust and confidence with respect to the handling of the estate.[68]

He stands liable to any interested party for any loss to the estate arising from his embezzlement or his commingling of estate funds with his own, or from negligence in the handling of the estate, or the wanton and wilful mishandling therof, for loss through self-dealing, and through failure to account for or terminate the estate when it is ready for termination and no extension of time has been granted by the court, and for any other breach of duty.[69]

The bond shall be in such reasonable amount as the probate judge may direct and with such surety or sureties as he may direct

and approve.[70] Each person who acts as a surety, as distinguished from a surety company, shall make oath that he owns property, exclusive of homestead property, subject to execution of a value over and above encumberances equal to the amount of the bond.[71] With the court's approval, the administration may in lieu of sureties turn over to the court collateral in an amount and nature sufficient to cover the amount of the bond. The court in turn shall turn it over to the county treasurerfor safekeeping.[72]

Letters of Administration

When the administrator's bond has been approved by the probate court, there shall be issued out of said court letters of administration stating in substance the duties and the authority of the administrator. Such letters shall be sufficient to entitle him, and shall be evidence of his authority, to secure and take possession of any and all property of the estate.[73]

Protection of Estate Before Letters Granted

Embezzlement or alienation of decedent's property before the granting of letters of administration will result in liability to the administrator for double the property mishandled, to be recovered for the benefit of the estate.[74]

Wherever by reason of delay in granting letters of administration, or whenever otherwise deemed expedient, the probate court may appoint a special administrator, pending the appointment of a regular administrator, to collect assets and preserve the estate for the regular administrator. The special administrator may be empowered to sell perishable or other personalty by order of the court.[75]

Rights and Duties of the Administrator

Duty to Collect Assets and file inventory. The administrator has the right and duty to take possession of all realty and personalty immediately.[76] Within 30 days the administrator shall make under oath and return to the probate court a true inventory of the real estate and all personalty com ing into his possession or knowledge. If any property is encumbered, the nature and amount of the lien shall be shown. Everything except cash obligations of the U.S.A. or stocks, bonds, or other securities listed on recognized security exchanges, shall have been appraised by 2 or more disinterested persons appointed by the judge. Appraisers for property located in another county may be appointed by the judge in either that county or in the county of residence of the deceased.[77]

The administrator or any heir or creditor, or anyone else interested in the estate, may complain an oath to the judge if he suspects anyone to have concealed, embezzled, conveyed away or disposed of any mohey or other personalty of the deceased, or that such person has knowledge of any deeds, conveyances, bonds, contracts or other writings which contain evidence of or tend to disclose the deceased's right, title, interest, or claim to any realty or personalty. The judge may cite such person to appear and be examined under oath. If he refuses to appear or to answer relevant questions,

the judge may commit him to the common jail until he does.[78]

In the event the deceased was the individual or joint lessee of a safe deposit box or compartment, the bank or other lessor of the box shall have refused further access thereto on his death until it is opened in the presence of the county treasurer (or his deputy) of the county where located. The administrator, the surviving joint lessee, or anyone else entitled to access thereto may procure the attendance of the county treasurer, or his deputy, at the opening of such box by serving a 5 day notice of him, either personally or by registered mail (which may, however, be waived by the treasurer). The treasurer shall make an inventory of the amount and description of securities, deposits, or other assets contained in the box and shall file it with the probate court.[79]

Duties with respect to claims against the estate. Subject to the right of homestead and dower and all prior charges against the estate, a decedent's estate, both realty and personalty, is subject to payment of his debts, but none except those secured by a lien on his property shall be paid unless filed in the probate court. Immediately upon approving the administrator's bond the judge should fix a date for the filing of claims and for the hearing on claims, the latter to be not less than 2 nor more than 4 months from the date of the first publication of the order therefor. There must be publication for 3 consecutive weeks. The judge may also

require notice to be given by registered mail, with return receipts demanded, to any interested persons in the United States, or personal service upon such as can be found within the county - though if an attorney has entered his appearance for any such person, service shall be had upon the attorney in lieu thereof.[80]

The judge shall hear all claims, except that he may appoint a referee or referees to hear "contested" claims. The judge, in the latter event, may enter an order approving their recommendations. The judge's order allowing or disallowing claims is final and may be appealed from, except as to claims less than $50.00.[81] Such order shall contain a provision closing the estate to claims.[82] However, a creditor who has failed to present his claim shall be allowed to later do so if he applies within 18 months from the date set for the original hearing. Such creditor must bear the costs of these extra proceedings.[83]

Widows rights and other charges on property. Prior to entry of the order allowing or disallowing claims, and closing the estate to claims, the judge shall serve notice on the widow of her right to make an election with respect to real estate, whether to take her right of dower and homestead in lieu of the share of such real estate which she is otherwise entitled to by law. She shall then have 60 days from the date of the order allowing claims in which to make her election, though this period may be extended in some cases in the dis-

cretion of the court. The order allowing claims shall not be entered until the administrator files proof of having given her notice. If she fails to make her election within the required time she will thereafter be barred from claiming her dower and homestead rights, and will be conclusively presumed to have elected to take what she is entitled to under the laws of descent (except in respect to any real estate which isn't discovered until later, or after the estate is settled).

If the widow elects to take dower and homestead rights instead of her share as an heir, the judge must set a hearing on the matter, giving due notice to all interested parties. Publication is not absolutely necessary if sufficient notice is otherwise given. The widow must bear half the costs of the proceedings. The judge shall appoint two disinterested persons to decide whether division of the real estate is practicable and, if so, to recommend which 1/3 part, quality and quantity considered, should be set off as dower to the widow for her use during her lifetime. When the real estate in which dower is to be assigned cannot be divided without damage to the whole, or where it cannot be divided by metes and bounds, the dower may be assigned as 1/3 of the rents, issues and profits of such real estate, to be had and received by the widow as a tenant in common with the other owners of the estate. If not appealed from, the order assigning dower is then filed with the register of deeds.[34]

Upon the request of the widow, she and minor children constituting the family of a deceased man shall be entitled to such reasonable allowances out of real and personal property as the probate court determines to be necessary for their maintenance and support during the progress of settlement of the estate, according to their circumstances, but in case of an insolvent estate, not longer than until their shares in the estate are assigned to them, nor for more than one year after the decedent's death. On showing of necessity such allowances may be continued beyond such year in a solvent estate, but shall be charged as advancements against the shares of the widow or children, as the case may be. None of such allowances shall be considered expenses of administration.

Before final distribution of the estate among the heirs, discussed later, an allowance may be made for the support of children under 16 out of assets remaining to be distributed.

Where a deceased woman was at the time of her death the sole living parent of any minor children, or where they were principally supported by her, the court may grant allowances for their support the same as if they had been children of a deceased man.[85]

Priority and satisfaction of claims and other charges. Charges against the estate shall be paid in the following order of priority:

1. Expenses of administration

2. Widow's priority share in personal property.

3. Allowances made for the widow and minor children.

4. Estate and inheritance taxes.

5. Claims allowed against the estate, in the following order of priority:

   a) The necessary funeral expenses, as determined by the judge.

   b) Expenses of last sickness.

   c) Debts due the state of Michigan.

   d) All other debts.

6. Allowances, if any, for children under 16 of a deceased man or of a deceased woman who was their sole living parent or principal supporter.

Such of the above charges as have not already been discussed will be treated later. All of the above listed claims and charges, except the second, may be satisfied out of both the real and personal property.[86] However, all the personalty shall be first applied to their satisfaction. If insufficient, the administrator may apply for a license to resort to real estate.[87] When real estate is resorted to, dower and homestead rights, if any, must be given special consideration, as will be discussed later.

Rights and duties with respect to real estate. 1. In general. The administrator not only has the right, but is under duty to take possession of the real estate immediately upon issuance of his letters of administration. "Possession" means to exercise control over the property for the benefit of

the estate. The administrator's right of possession does not interfere with homesteads rights nor does it affect the title to the property, which is in the heirs. It descends to them as of the date of death subject, however, to being divested if it is necessary to sell the property to pay debts and expenses of administration, and also subject to the widow's rights and certain other charges upon the real estate.

The administrator may lease the land or any interest therein, including oil, gas and mineral rights, from year to year, or for a term of years, where licensed so to do by the court. The court may grant such license wherever it appears to be necessary or expedient for the best interests of the estate. The administrator may cancel or modify any existing lease in the same manner as the deceased could have done if living. He may receive rents, issues, and profits until the estate is settled, or until the property is earlier delivered over by order of court to those entitled thereto. Any heir having an interest in the property may petition to have it delivered over and the court may do so if it appears that there is sufficient other property to satisfy all debts, expenses of administration, or other charges.[88]

The administrator shall be accountable for the income of the real estate while it remains in his possession. If he negligently fails to collect rent he may be charged with it anyway, and left to suffer the loss personally.[89] If he uses or occupies any part of the real estate he shall account for

it as may be agreed upon between him and the parties interested or as adjudged by the probate court, with their assent. If they do not agree on the sum to be allowed it may be as certained by one or more disinterested person appointed by the court, whose award, if accepted by the court, shall be final.[90]

It is the administrator's duty to keep all houses, buildings and fences under his control in good repair,[91] keep the property insured and otherwise maintain its upkeep,[92] and pay the taxes.[93]

All of the heirs and next of kin who shall, with the consent of the administrator, or otherwise, have possession of any part of the real estate before all of the charges against it are paid or satisfied shall hold the same subject thereto, and shall be held to contribute according to their respective liabilities to the administrator, or to any heir or next of kin from whom any part of the estate may have been taken, for the payment or satisfaction of such charges. The administrator shall be held liable if any such person fails to make such contribution unless he can show that the possession by such person was without his consent and that he was unable by diligent effort to prevent it.[94]

If there is a widow who is entitled to dower in any of the real estate, she may continue to occupy it with the children or other heirs, or may receive 1/3 of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.[95]

Besides her homestead rights, she may remain in possession of the dwelling house of the deceased rent free for one year after his death, by virtue of her widow's quarantine.[96]

2. Sale of Real Estate. Part or all of the real estate, or any undivided fractional interest therein, may be sold, upon petition of the administrator, under license of the probate court in any of the following cases:

1. Where the personalty in the administrator's hands does not appear to the court to be sufficient to pay the deceased's debts and the charges of administering his estate, or where it is for the best interest of all persons interested in the estate that some or all of the realty be sold for such purpose in lieu of disposing of the personalty.

2. Where it appears to the court that the sale is necessary to preserve the estate or prevent its sacrifice.

3. Where it appears to the court that it is necessary, or will be for the best interests of the persons interested in said real estate as heirs, to sell the same for the purpose of distribution, providing that the petition has been approved in writing by the persons owning a majority in interest of the real estate proposed to be sold (guardian may sign for those under guardianship). The computation of "majority" shall be based upon the interests in the real estate of only those persons who would be entitled to participate in its distribution if it were personalty. So dower interests of the widow are not considered, for this purpose, though any interest she holds

by virtue of a deed or recorded contract is considered. If the majority in interest is shown to approve such sale and the administrator refuses to petition for it, any one of such persons may file a petition.[97]

If it appears to the court that it is necessary to sell a part of the property, but that by such sale the rest or some part of the realty would be greatly injured, the court then may authorize the sale of the whole or of such part as may be judged necessary and for the purpose of the best interest of all concerned.[98] The license to sell shall specify the purpose for which authorized.[99]

No license to sell, except for the purposes of distribution, shall be granted if any of the persons interested in the estate shall give bond in such sum and with such sureties as the court shall approve, with condition to pay all the debts and expenses of administration, to the extent that personalty is found insufficient therefor.[100]

The widow may appear voluntarily and waive dower and homestead in the real estate sought to be sold, but in the event such rights are not previously waived there must be served personally upon the widow, at least 10 days prior to the hearing on the petition for license to sell, a notice to appear and elect whether she will take her dower and homestead in such real estate. In the event she does not then give notice of her intention to take dower and homestead she will be deemed to have waived same and shall be barred from later claiming

either dower or homestead in such real estate as is sold pursuant to such notice and license. The judge may, however, grant her additional time to make her election where deemed necessary. If she elects to take her dower and homestead right, then proceedings must be held for such purpose and either a 1/3 part, quantity and quality considered, set off aside for her use for life, or her dower assigned from rents issues and profits of the whole tract (providing, of course, that the deceased held full title to the whole)[101] Dower may be set off in lands that are also subject to the widow's homestead rights.[102] The license to sell the real estate following assignment of dower may nevertheless extend to the reversion of her dower.[103]

If the sale is to be for the purpose of paying debts and expenses of administration, and homestead rights are not waived, the judge at the hearing on the petition shall determine what, if any, part of the real estate constituted the homestead of the deceased, not exceeding 40 acres. Other real estate should be ordered to be sold first, but if there is no other real estate, or if it is insufficient to pay debts and expenses the homestead may be ordered to be sold, or a part thereof in case its value as determined by 2 disinterested persons exceeds $2,500 and it is determined by such persons that it can be divided without material loss or injury (so that a homestead including the dwelling house of not over $2,500 in value may remain). In case the whole homestead is ordered to be sold

the administrator shall retain $2,500 of the proceeds for the benefit of those entitled to the homestead and shall invest it in a new homestead or in other approved securities (which shall remain exempt from execut ion) for their benefit. Only the surplus may be used to pay debts and expenses of administration.[104]

When, after a full hearing on the petition to sell, the judge finds that the sale is necessary or proper for the purposes or reasons set forth in the petition, or if such sale be assented to by all persons interested, he shall make an order of sale.[105] He shall, however, require a further bond from the administrator, with sufficient sureties, conditioned to account for all the proceeds of the sale, of such property. Both the sureties on this bond and the sureties on his regular bond are chargeable for the proceeds. The administrator shall then be authorized to sell any time within 1 year and 6 months from the time of the license.[106] If the sale is never consummated, the additional bond is automatically cancelled at the end of the period covered by the license to sell.[107]

The sale may be licensed as a private sale. If it is not, a public sale must be had, requiring the posting of 3 public notices and 6 weekly publications of such notice before hand. If licensed to sell at private sale there must first have been an appraisal by 2 or more competent and disinterested persons, reported under oath, for this purpose. The administrator may

then be licensed to sell at private sale at the high est price obtainable, but not less than the value as determined by the judge (though if after making diligent effort he is unable to obtain the value as so determined, he may petition for a license to sell at a lesser amount). Any such sale must be confirmed and approved by the judge before any deed passing title can be valid and effectual.[108]

The administrator making the sale shall not directly or indirectly purchase, or be interested in the purchase, of any part of the property sold. Violation of this provision renders the sale void.[109] However, each suit to void a sale alleged to be made by an administrator for his own benefit must rest upon its own facts.[110] A number of court actions instituted to invalidate such sales have been appealed to, and passed upon by, the Supreme Court. No doubt there have been other cases in the lower courts which were not appealed from. If the sale is found to be fraudulant the administrator may be held liable to anyone having an estate of inheritance therein, for double the value.

Sale of real estate under license of court may be for cash or not less than 1/3 cash, with the purchaser's note and mortgage back, for the balance (the mortgage to run not over 5 years and at a legal rate of interest, payable at least annually,[111] all terms and conditions subject to the judge's approval) by executory (land) contract with at least 20% down, the contract not to run longer than 5 years (though the contract may provide that if 50% of the purchase price is paid within 5 years, the

administrator shall convey the land to the purchaser, his heirs, or assigns, and take back a mortgage for the remainder to run for not over 5 years from its date, and at a legal rate of interest, payable at least annually, with all the terms and conditions subject to the judge's approval).[112]

The administrator shall immediately make a report of the sale, and the judge may enter an order confirming it. However, no order of confirmation shall be made until at least 8 days after the report has been filed, unless all parties interested in the estate shall in person, or by attorney or guardian, consent in writing to such confirmation, or unless, in the opinion of the court, such delay shall be clearly injurious to the estate.[113] The judge shall examine the proceedings, and if he is of the opinion that they were unfair, or that the purchase price is disproportionate to the value, or if someone else has bid at least 10% more (exclusive of expenses of a new sale) and makes at least a 10% deposit of said sum with the administrator, he may set the sale aside and direct a new sale. Or the judge may in his discretion receive a written report of the administrator of a subsequent bid, and if after a period of 8 days no further bid is received, the judge may confirm sale of the property to said subsequent bidder.[114]

The sale shall be made subject to all charges on the property, by mortgage or otherwise. If the estate is in any way liable for the amount secured by any such mortgage, or for any such charge, the sale shall not be confirmed until the purchaser

executes a bond to the administrator for the benefit and indemnity of himself and the persons entitled to the interest of the deceased in land sold, in double the whole amount of the payments thereafter to become due, with such sureties as the judge shall approve.[115] This would not seem to be necessary where the only such charge is a mortgage with respect to which there has been a "novation". That is, where the purchaser has assumed the mortgage and the estate has been released therefrom.

The proceeds of sale should be used for the purposes for which the real estate was sold. The surplus of the proceeds of the sale remaining on final settlement of accounts shall be considered as real estate and disposed of among the persons, and in the same proportion, as the real estate would have been disposed of by law had it not been sold.[116]

It has been held that, where an heir was a debtor of the deceased, neither his share of the real estate, nor the proceeds of its sale, is chargeable for this debt. The administrator must collect the debt in the same way as other debts owing to the estate.[117]

3. Sale by heirs before settlement. One who purchases the real estate from the heirs before the estate has been administered, and the residue assigned, takes the land subject to debts and expenses of administration.[118] He also takes it subject to the administrator's right of possession, unless and until this right has been relinquished by an agreement authorized by the court in the manner previously described. He also takes

the property subject to the widow's various rights therein.

4. Mortgage of real estate. The administrator may be licensed to mortgage the real estate, or any part thereof, for the purpose of paying debts of the deceased, debts of the estate, or for the purpose of completing the erection of buildings begun by the deceased, or by someone on his behalf or for his benefit. This right to mortgage extends only to such property as might be sold for such purpose (although, where there is already a mortgage or other lien on the homestead, it may be mortgaged to pay off such mortgage or lien). The procedure to follow is set out in the statutes.[119]

Rights and duties with respect to personalty. The administrator is entitled and under duty to possess, care for, manage, and preserve all of the personalty of the deceased,[120] (including any growing crops of grain, grass or fruit), subject to the widow's right of selection. She shall be allowed all her articles of apparel and ornaments and all wearing apparel and ornaments and household goods of the deceased, with no limitation as to value, and may on request be allowed to select other personalty (including farm personalty) to an amount not exceeding $200 in value.[121]

The administrator may sell at private sale any part of the personalty having a market value definitely as certainable from time to time because of quotations or transcations on any securities, produce, or commodity exchange, or similar establishment. All their personalty may be sold without an order of court

if sold at not less than its inventory value. The administrator may apply for license to sell all or any personalty at public auction, upon giving notice of time and place as directed by the judge.[122]

The administrator has the duty to keep estate funds reasonably invested in such stocks, bonds, mortgages, notes, securities or other properties, real or personal, as an ordinarily prudent man would purchase.[124] Second mortgage loans have been held not to be a proper investment, as a general rule, but may be safe and proper under certain circumstances.[125] Except with the approval of the court, he shall not engage, in his personal capacity, in any transaction with the estate. He shall not personally derive any profit from the purchase, sale, or any property of the estate. He shall not invest estate funds in any company with which he is affiliated, other than as a bondholder or minority stockholder, except for a bond or trust company of which he may be a director, officer, or stockholder.

Continuation of partnership business. If the deceased had been engaged in a partnership business, and it is continued after his death pursuant to a continuation agreement among the partners, the administrator shall allow it to continue with such of deceased's assets, in such manner, and for such period as provided in the agreement, though it may be discontined by mutual agreement. The surviving partner or partners need not carry on the business if not obligated to by contract.[126]

Filing final account. The administrator is under duty to file with the court an annual account, or more frequently if directed to do so, showing in detail all of his doings, including receipts and disbursements, and the property remaining in his hands. Whenever he finds the estate ready for closing he shall file his final account, or the court may require him to do so. The judge may forego a hearing of each annual account, to save expenses, until the final account is filed and a hearing had thereon. Where real estate is involved, there must be publication in the same manner as for the hearing on claims. The order allowing the final account is, subject to appeal, (and except for fraudulent concealment by the administrator) conclusive against all persons in any way interested in the estate, including minors, incompetents, those in military service, and foreign heirs, providing they shall have been given proper representation through appointed guardians, or as otherwise required.[127]

Determination of heirs, assignment of residue, and partition or distribution. After payment of prior charges against the estate, including inheritance and estate taxes, the court may grant a reasonable allowance out of the balance of the realty and personalty to children under 16 of a deceased man, or of a deceased woman who was their sole living parent or principal supporter, for their maintenance until they reach 16, according to their circumstances and considering their shares of the estate. The administrator may be ordered to retain sufficient estate for that purpose.[128] The court shall then enter an order

assigning the residue, if any, to those by law entitled thereto.[129]

When the residue of either real or personal property assigned to 2 or more heirs is in common and undivided, and their shares therein not separated, the court may, on petition of any such persons, hold a hearing and order the partition and distribution of same, even though located in another county.[130] The right of the probate court to partition real estate has been held to be confined to the case where an assignment of residue therein has already been made. [131]

Discharge of administrator. After allowance of the final account and entry of order assigning residue, and order of partition, if any, the administrator shall made distribution in accordance with such orders and take receipts from the heirs. On filing such receipts, and showing that the inheritance tax has been paid, he may be discharged. There shall be an order determining that no inheritance tax is payable, where such is the case.

Reopening estate - after discovered assets. The court may reopen the estate proceedings for the purpose of administering after - discovered assets, or to complete the administration where it had not been fully administered when closed, or to correct typographical errors and ommissions or misdescriptions of property, but the failure of a claimant to file a claim isn't grounds for reopening the estate.[132]

Appointment of successor administrator. Where the original administrator dies, or is removed or allowed to resign, or in

certain other situations, the court shall appoint a successor administrator, in the same manner as for the appointment of the original administrator.[133]

Small estates. The law provides for simplified settlement procedures in case the estate consists only of personalty of not over $750, and does not even require the appointment of an administrator where the estate consists solely of a pay check or other personalty of not over $500.[134] However, where there is real estate involved these simplified procedures are not available.

Appeals. In most instances, anyone aggrieved by any order (or denial to make an order) of the probate judge may appeal within 20 days from the date of the order or denial, upon putting up bond as required. This time may be extended an additional 40 days by the judge, upon cause shown.[135]

Settlement Without Administration.

Estates of deceased persons may be settled between all those who are competent to contract without intervention of the probate court.[136] We have noted that any creditor may request that an administrator be appointed if those having prior rights to do so fail to exercise such rights within 30 days after the deceased's death. But the probate judge is given considerable discretion to allow settlement to be made among the interested parties even though administration proceedings are held.

All debts and obligations of the deceased will be barred within 6 years from his death unless presented to the probate

court, or earlier barred by the court in administration proceedings. The 6 year limitation applies notwithstanding no administration proceedings are ever held.[137]

Determination of Heirs. Where no administration proceedings are held, the statutes provide a method whereby the interests of the heirs in the real estate can be determined. Anyone claiming to be an heir of the real estate can request that a determination of heirs, and their respective interests, be made by the probate court in the county where the land, or any part of it, lies. Proceedings shall be had for that purpose (after 3 weekly publications of notice thereof) including a hearing at which testimony of witnesses shall be taken. Unless appealed from, the judge's order determining heirs, and their respective interests, shall be conclusive evidence of facts determined, if such determination is made after 15 years from the deceased's death. Otherwise, it shall be only presumptive evidence. The order determining heirs shall be recorded in the office of the register of deeds.[138]

Estate Costs. The following includes statutes regulating most estate costs.

1. Compensation of administrator. The administrator shall be allowed all necessary expenses in the care, management and settlement of the estate. He shall also be allowed a commission on the amount of personalty collected and accounted for by him, as follows: 5% on the first $1,000: 2½% on all over $1,000 but not over $5,000: 2% on all over $5,000. He

shall also be allowed this same commission on the proceeds of real estate sold under license of court, for any purpose, in addition to any reasonable commission paid to agents employed in making sale of either realty or personalty. The judge may in his descretion allow these same commissions on real estate even though it was not sold in process of settlement, upon request filed by the administrator. Also, upon request, he may allow extra compensation for extraordinary services not usually required of an administrator, or for unusual difficulties or responsibility incurred.[139]

2. Employment and compensation of attorneys. Any administrator may employ an attorney or attorneys in administering the estate, and they shall receive such reasonable compensation for services rendered as shall be approved by the probate judge.[140]

3. Probate court fees. Neither the probate court, nor its register, clerk or stenographers, shall receive any fees for performing any duties with respect to administration of estates, though the court may make and furnish attested copies of any record, paper, or proceeding upon the request of any person and receive fees for such copies as follows: order of publication, 25¢; all other probate orders, 75¢; letters of administration, $1.00; all certifications issued under the court's seal, 50¢; 8 cents per folio, plus 25¢ for certification, of all other copies. Specified fees may also be charged for taking depositions and for transcripts of test-

imony, other than depositions, and for copies of same.[141]

4. Publication fees. The cost of publishing any probate court order or other process shall not exceed $1.50 per folio for the first insertion, nor 75¢ for any subsequent insertion. "Folio" means every 100 words, or part thereof.[142]

5. Appraiser's fees. Each appraiser appointed to appraise the property inventoried by the administrator, and to appraise real estate sold at private sale, shall be entitled to 5¢ per mile from his place of residence to the property appraised and return. He may also be entitled to such reasonable compensation as the judge will approve.[143]

In addition to the above discussed estate costs there may be much miscellaneous costs as witness fees (they may be allowed $5 per day, $2.50 per half day, plus 10¢ per mile from place of residence in this state.[144]) and fees charged by the register of deeds particularly, for filing the order assigning residue, In the event contested claims are referred, the referees may be allowed such reasonable compensation as the judge shall determine (unless referees are retained by the board of supervisors on a monthly or annual salary). Costs of such proceedings may also include witness fees and the attorney fees of the contesting party (not exceeding $25 per claim) in the discretion of the judge.[145]

Tax laws.

1) Michigan Inheritance Tax. The most essential provisions of the Michigan Inheritance Tax laws, for our purposes, are the following:

The inheritance tax is imposed upon the inheritance of property of the value of $100 or over, or any inheritable interest therein, under the laws of descent and distribution. The tax is not imposed upon the whole estate as such, but shall be computed upon the value of the property passing to each heir.[146] Property inherited by a husband or wife is exempt from taxation to the clear market value of $30,000. The widow (though not the husband) is entitled to an additional $5,000 exemption for each minor child who has failed to inherit any of the deceased's property. A $5,000 exemption (from the clear market value) is also given to each of the following who may have inherited property: grandparents, children or other lineal descendants, brother, sister, adopted children, or any person to whom the deceased stood in the mutually acknowledged relation of parent, if such relationship began on or before his 17th birthday and continued until the deceased's death.

The rate of tax on property received by any of the above designated persons, over and above the exemption to which that person is entitled, is as follow:

Real estate rate	Personalty rate	Clear market value of property
1 1/2%	2%	of first $50,000, less exemption
3%	4%	on next $200,000
3 3/4%	5%	on next $250,000

Property that is subject to tax shall be deemed to consist of real and personal property in the proportion that the clear

market value of each kind of property bears to the clear market value of the total. Thus, if a son who inherits (after deduction of debts, expenses, etc.) real estate valued at, say, $3,000, and personalty valued at $5,000, his $5,000 exemption cannot all be applied on the personalty to take advantage of the lower rate on real estate. The $3,000 remaining taxable above his exemption would be deemed to consist of 3/8 real estate and 5/8 personalty.

All other heirs who inherit any property in excess of $100 are entitled to no further exemptions, and are taxed at the rate of 10% of the first $50,000 (not deducting the $100) and 12% on the next $450,000.

Inheritance taxes become due as of the date of death and a lien is imposed upon the property until paid. The administrator shall be liable to pay the tax and shall show a receipt from the county treasurer before being discharged. However, any heir receiving taxable property is also liable to pay the tax if the administrator fails, or if no estate proceedings are opened. Determination of inheritance taxes will be made by the probate judge. In determining the amount of property inherited for taxation purposes, funeral expenses, debts, and expenses of administration should first be deducted from the value of the personalty.[147] However, no deductions shall be made for any allowance made by the court for the benefit of the widow and minor children during settlement when there is income from the estate accruing after the deceased's death

which is available for such purpose, or for a longer period than one year, or for a greater amount than is actually used for such purpose.

If the tax is paid within 12 months after death a discount of 5% shall be allowed. However, if not paid within 18 months 8% interest may be charged, except where the delay was unavoidable.

In case a Federal estate tax must also be paid, the Michigan inheritance tax may be increased sufficiently to take full advantage of the 80% credit allowed for payment of state inheritance taxes upon the Basic Federal Estate Tax, as explained below.

2. Federal Estate Tax. The Federal Estate Tax is a tax upon the estate as a whole, and regardless of who the heirs are.[148] The tax in no event will be imposed on an estate valued at less than $60.000. If the "gross" estate doesn't exceed $60,000, a return needn't even be filed. The gross estate consists of the fair market value of the deceased's property, either as of the date of death or one year later. The administrator has the option as to which date to choose for valuation purposes. From the gross estate certain deductions are allowed, including funeral expenses, debts, and expenses of administration. This yields an "adjusted" gross estate, from which up to 50% thereof may be deducted as a "marital deduction." This deduction may, however, be no greater than the value of the property, or interests in property, passing to a surviving spouse. The Estate Tax is based upon the "net"

estate and consists of the Basic Estate Tax, to which a blanket $100,000 exemption applies, and the Additional Estate Tax, to which a blanket $60,000 exemption applies. The number of estates over $60,000 (after debts and expenses and any marital deduction is substracted) is considerably limited. For our purposes, it would therefore seem unprofitable to examine the complicated rate schedules applied in the computation of the tax.

Any Michigan inheritance tax paid may be allowed as a deduction from the gross Basic Estate Tax, though such credit is limited to 80% thereof. The "gross" basic tax is such tax before deducting said credit, or credit for federal gift taxes paid.

A return, if one is necessary, shall be filed within 15 months from death and is payable in full (to the Collector of Internal Revenue) within the same time. It is the administrator's duty to pay the tax.

Among other taxes which the administrator may be called upon to pay are the Federal Income Tax, and the Michigan Tax on Ownership of Intangible Personal Property. A fiduciary income tax (information) return will need to be filed by the administrator if $600 or more gross income on estate property is realized by the estate. However, any income earned by the estate during the taxable year which is distributed to the heirs during the same taxable year is taxable to the heirs. The Michigan tax on intangibles is, like the Federal Income Tax, not aimed at the inheritance process as its source of revenue. It is a tax on the

ownership of intangible property, including bank deposits, stocks, bonds, etc. If such property produces income the rate of the tax is 3% of such income. If it produces no income, the rate is 1/10 of 1% of the face value of the property, though bank deposits or shares in building and loan associations are taxed at only 1/25 of 1%. Several types of intangibles, including bonds of the United States and the State of Michigan, are exempt from the tax. Moreover, $20 shall be deducted from any tax due, thus nullifying any tax not over $20. If a tax is due, the administrator is under duty to file an information return.[149]

Rights and Duties of Co-owners. The more important questions to be answered here probably are with respect to the real estate. There are, in general, 4 types of undivided ownership which may exist between heirs who remain co-owners of the real estate after the estate has been settled: 1. undivided ownership (fractional interests) with present right of possession 2. undivided ownership in vested remainder interests 3. division of ownership interests over time 4. combinations of any of the other 3 types. The first type will arise automatically between two or more heirs on the death of a deceased owner, providing he held full title. The second type may arise if the deceased held only a (vested) remainder interest in the property. This would occur where someone else holds a life estate in the property. If the deceased's remainder interest were "vested", rather than a mere contingent interest, it would descend to his heirs.

In general, it is vested if no conditions are left to be fulfilled other than the death of the life estate holder. This is true, for example, with respect to the remainder interest of the heirs in land in which the widow's dower has been assigned. For her dower interest is a life estate. The situation may also arise where part or all of the land is conveyed by the other heirs to the widow and she conveys it back to them with no strings attached other than the reservation of a life estate in herself. All of these situations also give rise to the 3rd type of undivided ownership , and to the 4th. The writer feels that the division of ownership interests over time, as between a life estate holder and the owner of a remainder interest, should be considered a type of undivided ownership. When this is combined with undivided ownership of the remainder interest, itself, we have one version of type 4.

Undivided ownership, or fractional interests, with respect to present interests in the real estate will likely be the most common type, so we shall center most of our attention on it. Heirs acquiring such interests become tenants in common of the real estate.[150] The rights and duties which they acquire with respect to the property remain the same, however, even though they later get together and place the title in joint tenancy among themselves, except that, in that event, they will then necessarily hold equal undivided shares therein, with rights of survivorship.

We have already noted that the administrator is under duty to take control of the real estate during settlement of the estate, and pay the taxes. We are now interested in rights and duties of the co-owners after the estate is settled, though the situation where no estate preceedings have ever been opened will also come in for some consideration.

Each of the co-owners is equally entitled to possess the real estate, so one co-owner is not entitled to payment for the use and occupation of the property by another co-owner in the absence of an express agreement to do so.

But the Michigan court has cited with approval an old rule that if the property is such as not to admit of use and occupation by more than one co-owner, and is occupied by only one, or if capable of occupation by more than one and it is so used or occupied as to in effect exclude the others, he may be chargeable for such use or occupation.[151] If one co-owner has rented out part or all of the real estate he may properly be called upon to turn over a share of the rent to the other co-owner.[152] A leading legal treatise on the law of real property suggests that this would not be true, however, to the extent that rent is based upon improvements placed upon the property by such co-owners.[153] The co-owner who occupies the real estate is not entitled to recover any thing from the others for expenses he may incur , in the absence of an agreement to this effect.[154] However, another leading legal treatise on real property law states that if

one co-owner requests another to help him make repairs necessary for the preservation of a building or other structure, and is refused help, he is entitled to reimbursement for a share of the cost, under the law in most states.[155] No Michigan cases on this point were found.

As between the co-owners, it is the duty of the co-owner in possession of the real estate to pay the taxes during such possession, though he may be entitled to reimbursement for a share thereof, except where his possession is held adversely to the other co-owners.[156] The law provides that, while real estate taxes shall be assessed to the administrator during settlement, where no administration proceedings are had they may be assessed to the heirs, without naming them. If requested, undivided interests may be assessed to the respective owners thereof, in the discretion of the supervisor. Any co-owner may pay taxes merely on the share he owns and shall be entitled to a receipt to this effect. However, he must first get the assessor's valuation of his interest and display his statement indicating such valuation.[157] The whole real estate may be sold to pay the delinquent taxes of any one co-owner, where no purchaser can be found who is willing to take less than full title, though an attempt must first be made to sell no more of the property than is necessary.[158]

His right of possession does not entitle one co-owner to exclude another from the property. It will be presumed that the one in possession recognizes this, until the contrary

clearly appears.[159]

Any co-owner has the right to demand partition of the real estate at any time after an assignment of residue has been made, and have a part of the property, quality and quanity considered, set off to him as his share therein. In such proceedings the courts will attempt to adjust equities between the co-owners. For instance, where a widow who had requested partition had failed to account for income derived from the property she was held not entitled to rembursement for taxes and other expenses.[160] And where one son had driven off a brother (who had arranged to rent the farm from the administrator of the estate during settlement) with a pitch fork he was required, in the brother's suit for partition, to account for his use and occupation.[161] In a case where the property was sold in partition proceedings, the court held that, where a co-owner had made improvements which increased the value of the property, this should be taken into account in dividing up the proceeds.[162] In another suit for partition the court held that where one co-owner had demanded a share of the crops during the growing season, and the other retained exclusive possession until the crops matured, the former should be permitted to share the proceeds of such crops after deducting costs of production. This deduction was allegedly made both for the benefit of the co-owner and his tenant who had planted the crops.[163] Where one co-owner had been living in the dwelling, and this and an adjoining tract

was awarded, in partition, to another co-owner, the wife of the former co-owner was held not to have acquired any homestead rights to the dwelling and could be ejected.[164]

The co-owner or owners in possession are not lawfully permitted to commit waste on the common lands. "Waste" has been defined as anything that would tend to destroy the the security for a mortgage on the property, including failure to pay taxes and insurance where the income is substantially more than enough for that purpose.[165] To cut and remove timber has also been termed waste, making the co-owner who does it liable to pay double the damages.[166] Any heir may also bring action for any waste committed by someone before the deceased's death, providing the administrator had not already recovered for same.[167]

Timber is considered part of the real estate. Since a co-owner can't cut and remove it himself (would be "waste") he cannot license another to enter and remove it.[168] Where iron ore was involved, the court held that no one co-owner had a superior right to choose what ore was the most profitable to mine, and to remove and sell it, without accounting therefor.[169]

Where one co-owner bought up the mortgage for the protection of all co-owners, but later foreclosed, the court held that while he couldn't divest the others of their interest, in that manner, they were obligated to promptly contribute their proportionate share of what he paid in order to take advantage of his purchase.[170] One co-owner cannot grant a lease of the

whole or any part of the property which will bind his co-owner.[171]

Any heirs or other co-owners who are minor children are not entitled to exercise any control over the property, except through their guardian, until they reach 21.

As between a widow who has been assigned dower, or any other life tenant, and the remainder man, after settlement of the estate, the former has no authority to commit waste on the real estate to which the life estate attaches, and may be held liable in double damages to the remaindermen, each according to his interest. A doweress is by statute required to keep houses, fences, and other appurtenances in good repair.[172] She is under duty to pay the taxes, [173] except perhaps in a case where the land is unproductive timber or other land.[174] It has also been held to be her duty to pay the interest on any mortgage existing on the property at the time of death and not yet paid.[175] She may sell her life estate, though it is not a readily marketable interest. As for mineral interests, she may work only such mines as have been opened or upon which leases have been give, but she may work them to the point of exhaustion, and keep the profits.[176]

Whether or not estate proceedings have been opened, a widow who is entitled to dower may continue to occupy the property with children or other heirs, or may receive 1/3 of the rents and profits, so long as they don't object, without having her dower assigned. This privilege shall continue until her dower is assigned or barred.[177] She can't be charged rent,

though will be chargeable for a share of any rent she receives from a third person. On the other hand, she cannot charge the other s for taxes and repairs paid by her. A widow who so continues in possession by common consent is to be treated as a tenant in common with the others, rather than as a life tenant. Her right to continue on this basis is not affected by the removal of minor children.[178]

Undivided ownership of a vested remainder interest in real estate creates few additional problems at the present, for any one of the remaindermen may be entitled to the same rights as one would be, to the extent of his interest. Such a remainder interest may be sold if a buyer can be obtained. However a court is not required to entertain proceedings to partition remainder interests in real estate.[179]

Our main concern is that this type of undivided ownership may indicate the possibility of difficulty between such undivided owners at the termination of the dower or other life estate interest.

Where undivided ownership continues in the farm personalty no co-owner has, as a general rule, exclusive rights to possess such property without the agreement of the others, nor to sell such property without their consent. However, where two or more co-owners conduct partnership farming operations, as against third persons, with no notice to the contrary, each will be able to bind the others in selling partnership property, even though there is an agreement limiting such authority.

PART II OPERATION AND EFFECT OF THE LAWS, IN ACTUAL PRACTICE

In this part of the study an attack was made upon the second and third objectives stated in the Introduction, i.e.,

1. to determine how the laws operate in actual practice, and
2. to find out what effect this has upon the ownership and operation of farm land. Because the two objectives are so closely related they were largely attacked together. However, the study was actually conducted in 3 general steps, as follows:

1. A historical study of one township, using court house records, to obtain ownership and related data.
2. A more detailed study of the most recent cases, using both court house records and personal interviews, to obtain data on settlement procedures, estate costs, and the effect upon farming operations, to augment the ownership and related data.
3. A study of the actual operation of the laws as currently applied, largely through interviews with probate judges in various counties.

Orange Township, in Ionia County, was selected as the area for study in conducting steps 1 and 2. The field work began in the spring of 1951 and was completed in the summer. To expedite the accumulation of the desired information it had been determined to select a township located in a county with a tract index of its deed and related records (in addition to the conventional grantor-grantee index) available to the public at its court house. In addition, it was determined to select an area

within commuting distance of East Lansing which would rank among the average to above average farming areas in the State. This and other reasons led to the selection of Ionia County, which is in the west-central part of the Lower Peninsula. The county lies in the northwest corner of Type of Farming Area No. 5, a dairy and general farming area. This area is one of the better farming areas in the State so far as net farm income, crop yield index, and several other factors are concerned. On the basis of farm account records of farmers cooperating with Michigan State College and the Extension Service, the net farm income (less 5% interest on investment) of farms in this area averaged $4, 169. in 1949.[1] The estimated average value of farm land and buildings in Ionia County, as of March 1951, was about $130 per acre. This figure is based upon reports from crop reporters associated with the Federal crop reporting service, and approximated the average for the State.

Orange Township was selected as the area within the county to study, principally because it embraces one of the uniformly better farming areas in the county and because it contained no cities or towns, so that our results would not be partially reflecting the influence of expanding urban areas, especially on the question of parcellation of ownership holdings. As reported in the 1945 Agricultural Census, its 23,500 acres of farm land

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1/ Vincent, W. H., Doneth, J. C., and Elwood, E. M., "Michigan Farm Business Report for 1949," Mich, Agr. Exp. Sta. Quart. Bul. Vol. 33, No. 2, Nov. 1950, pp. 169 - 178.

included 14,606 acres of cropland harvested, with little idle acreage and few crop failures. It had the third highest total valuation of farm land and buildings in the county. The report showed 94 full owner - operators, 22 part owner - operators (own some and rent some) one farm manager, and 48 tenants.[1] The township contains no lakes and, on the basis of soil maps, has a relatively uniform soil.

The township does not appear to include any unusual nationality background. It was settled largely by Englishmen, and is said to now include largely a mixture of English, German, and Pennsylvania Dutch, - predominately English. This would appear to be largely substantiated by the names of the owners involved in the study.

Historical Study of Orange Township, in Ionia County

The initial part of the study of Orange Township was conducted at the Ionia County Court House, where all available historical information relevant to the study was accumulated. With the aid of the tract index in the Register of Deeds office, all cases were isolated in which an owner of a tract of farm land had died intestate since January, 1925, owning either a fullor fractional interest which was left to be disposed of under the laws

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1/ Michigan Agricultural 1945 Census by Minor Subdivisions, Sec. 3. Bureau of the Census, U.S. Dept. of Commerce., Washington, D. C.

of descent and distribution. It was determined to select only those tracts which were 40 acres and over at the time death. In this way an attempt was made to avoid any influence from the relatively few residences of city workers located along the one main highway passing through the county, and on another highway lying along its west boundary. In the same manner all testate cases where death occurred since January, 1925, were isolated for the purpose of making certain comparisons. It was also determined to select cases where the owner died prior to said date but the tract in question was still held in undivided ownership among 2 or more co-owners, other than husband and wife, resulting from the death, whether testate or intestate, of a prior owner. This provided certain earlier historical information for comparative purposes. It also made it possible, in cases where an owner dying since January, 1925, held only a fractional interest resulting from death of a prior owner, to trace the historical sequence of events back to the death of such owner.

In this initial perusal of court house records information was obtained on the prevelance and extent of parcellation and consolidation of ownership units, or of undivided (fractional) ownership interests, associated with the inheritance process, whether testate or intestate. Information was also obtained on such factors as the time taken to open and close estates, and the time that the respective tracts remained held in undivided ownership.

There are 40 intestate cases and 28 testate cases where the owner has died since Jan., 1925. Of the 40 intestate cases only 35 owners are represented, since 5 of the owners died owning either a full or fractional interest in 2 separate tracts (40 acres or over) within Orange Township. For certain purposes this duplication will be unimportant, for example, in analyzing the extent of physical parcellation of separate tracts. For other purposes, such as in analyzing the length of time taken to open and close estates, the duplication is important and will be taken into account. The same type of problem is posed by the fact that but 36 separate tracts are actually involved in the 40 intestate cases and but 25 in the 28 testate cases -- resulting from the fact that a few owners owned or held an interest in 2 separate tracts of land. Moreover, a few of the tracts appear both in the testate and intestate cases, since 2 deaths, one testate and the other intestate, have occured since Jan., 1925, with respect to owners of the same tract. Such duplications have been taken into account in the following analysis.

The above breakdown of owners should not be taken as any concrete indication of the relative per centage of cases in which an owner has died without a will.

This is so because the cases included do not include cases where an owner died holding title to farm land in joint tenancy, or by the entireties, with rights of survivorship. Nor have we included cases where a land contract or other con-

tract to sell such land was enforced against the estate. Also remember that all tracts under 40 acres in size have been ignored.

In two of the 40 intestate cases the tract in question overlaps into another township. In each case, however, at least 2/3 of the tract lies in Orange Township. In one, the farmstead lies in Orange. In the other, there is no farmstead. Similarly in two of the 28 testate cases the tract overlaps. One tract, however, is the same tract as one of the two mentioned above. Over 2/3 of the other tract lies in Orange Township.

The total acreage involved, excluding the 294 acres overlapping into neighboring townships and taking account of all duplications, was approximately 5,320 acres as of the respective dates of death of each owner involved. The total acreage of farm land in the township being 23,500 acres, the acreage involved represents above 1/4 of the total acreage.

Opening and Closing of Estates. Considering first the intestate cases where an owner has died since Jan., 1925, we note that out of the 40 cases listed there are but 35 deceased owners, since 5 of these owners each owned 2 separate tracts. With respect to these 35, estate proceedings were opened in every case but 2. A Determination of Heirs was made by the probate court in both these 2 latter cases, but not until 4 years and 10 months and 6 years and 5 months, after death, in

the respective cases. Both determinations were made prior to 1943.

With respect to the remaining 33 cases the exact date of opening and closing the estate was not determined in 2 cases where estate proceedings were held in another county or state. Of the 31 remaining cases, estate proceedings were opened within one month in all but 6 cases. In 12 cases proceedings were started within 10 days, the earliest being 4 days from death. Out of the 6 cases in which proceedings were delayed more than a month 3 were opened within 2 months, one within 3 months, one within 5 months, and one 13 years and 5 monthes after death. The latter case was a case where the deceased left an apparently valid will but no petition to admit it to probate was ever filed and the estate proceedings, when finally opened, progressed as though he had died intestate. On information later obtained through an interview, opening was delayed until after the death of a widow. No serious difficulties appear to have resulted.

Out of the 31 cases for which information was obtained, 5 cases were closed within 6 months from the date opened (1 within 3 months, though it had not been opened until 2½ years after death). 10 other cases were closed within one year. Of the remaining 16 cases which took over a year to close, 9 were closed within 2 years, 3 others within 3 years, with the remaining 4 requiring over 3 years (one about 3½ years, one about 5 years, one nearly 7 years, and the other one 10 years

and 2 months).

When considered from the date of death, 3 cases were closed within 6 months (one within 5). 8 others cases were closed within a year. Of the remaining 20 cases which took over a year to close, 11 were closed within 2 years, 3 within 3 years, and 2 within 5 years. The remaining 4 cases were closed in about 5, 7, 10, and 14 years, respectively. The longest was actually nearer 13 years and 11 months. This case was the afore mentioned case where a will was never admitted to probate.

The observed "closing" of an estate is used in a somewhat guarded sense, for in 6 cases, while the administrator's final account had been approved by the court, and an assignment of residue had been made, there is no record of his ever being formally discharged. In another case, there was no record that his final account, which was filed, had been approved. This filing occured in 1937, so that the estate no doubt is considered closed by the persons interested. In the 6 cases where the account was approved this has occurred no later than 1942, so these also are no doubt considered closed. In actual practice, (on the basis of a later and more detailed analysis of the more recent cases), it is fairly safe to predict that the administrator, if he had been, would have been discharged within a day or two after allowance of his final account, and often on the same day.

We can partially summarize the foregoing analysis as follows: Estate proceedings were opened in almost every case,

and opened within a month in about 3/4 of the cases upon which definite information was obtained. A delay of more than 5 months was observed in but one case. About half the cases were closed within a year after being opened, all but 4 within 3 years, with one requiring a little over 10 years. The shortest observed time was about 3 months, with about 1/6 of the cases being closed within 6 months.

When considered from the date of death, the earliest closing was within about 5 months. About 1/3 of the cases were closed within a year, a little over 2/3 within 2 years, and about 3/4 within 3 years. 4, or between 1/7 and 1/8, took over 5 years to close. All of the estates which have been opened have been closed. None are in process.

Turning to the testate cases were death occured since Jan., 1925, we find 28 cases with 28 different owners. Estate proceeding were commenced in all of these cases. The exact dates of either opening or closing, or both, could not be obtained in 7 cases, in which proceedings were held outside the county or State. With respect to the 23 cases on which information was obtained with respect to opening, estate proceedings were opened within a month in all but 4 cases, (twice on the date of death, and within 10 days in about half the cases). Opening was delayed 4 months in one case, which was the longest delay observed. Estates were closed within a year in about half the 21 cases upon which such information was obtained, though no estate was closed in less than 7 months. There were 4 cases

which weren't closed for within 3 years, the two longest each taking about 5 years and 2 months. Considered from the date of death, the earliest closing was in 7 months, with between 1/3 and 1/2 of the 22 cases upon which such information was obtained being closed within a year and between 3/4 and 4/5 within 3 years. 2 cases took over 5 years to close, the longest taking 5 years and 5 months.

When compared to the intestate cases, there would appear to be little noticable difference, except that the testate cases appear to have been opened a little sooner in the usual case, and to displayed somewhat fewer evidences of greater delayed closing. A somewhat greater part of the intestate cases were closed within a year from death. While a few intestate cases were closed within 6 months, no testate case was closed in less than 7 months.

The qualification on use of the word "closing" mentioned in connection with the intestate cases must also be employed with the testate cases, since the administrator does not appear to have been formally discharged in 5 cases though the final account had been allowed and an assignment of residue had been made.

Parcellation and Consolidation of Ownership Units. We have already noted that there are but 36 separate tracts involved in the 40 intestate cases where death occured since Jan., 1925. Of this number, there is but one case where parcellation was directly

related to the intestate death of the owner. The parcellation occurred in 1931 when, in settlement of the estate, the probate court, by Decree of Partition, split off 20 acres of the 120 acre tract involved, and awarded it to one heir who had requested that his previously undivided 1/8 share in the tract be set off to him. Note that he was awarded 1/6 of the acreage. It apparently must have been of somewhat lower value than other comparable acreage. The remaining 100 acres continued to be held in undivided ownership among the other 7 heirs. Reconsolidation of the two tracts has so far not been accomplished. In one other case, voluntary parcellation was effected by a surviving father, who was sole heir of the 55 acre tract in question. It had been consolidated with 20 of his own on the date of death and 40 he later acquired by deed. He split the property thus consolidated into a 55 and a 60 acre tract, by deeding each separately to a different child. This was followed by several later shuffling of interests in, and sizes of, the 2 tracts constituting the 115 acres, the latest reshuffling being in 1938.

This small extent of parcellation has been more than offset by the consolidation with adjoining ownership units which has directly resulted from the intestate owner's death, or associated with the period of settlement or undivided ownership. [illegible] .It was not deemed advisable to do the extensive amount of research necessary to determine exactly what adjoining land was owned by an heir (or any purchaser from

the administrator or heirs) at the time the property in question was acquired. If such person later died, any consolidation which had continued to such time could be, and was, derived from the recorded assignment of residue in his estate. A check of the current tax records for Orange Township real estate failed to turn up any further evidence of consolidation than is reported herein, but there probably has been at least some consolidation which has been overlooked. Evenso, the amount observed more than offsets the parcellation. One observed instance of consolidation occurred at the date of death, and 9 consolidations were effected during settlement of the estate or while the original tract was still held in undivided ownership. Two consolidations were effected after the period of settlement and undivided ownership and cannot necessarily be considered directly related to the intestate death of the owner. Table 1, page 84, will give the reader some idea of the change in sizes of separate ownership units resulting from the conflicting pressures of parcellation and consolidation. The numbers in the respective columns indicate the number of tracts falling within the designated range in acreage. The few observed instances of "partial" consolidation are somewhat confusing and have been omitted. This occurs where an heir acquiring an undivided interest also owns or acquires either a full or fractional interest in an adjoining tract.

Table 1. Effect of Parcellation and Consolidation on Ownership Units -Intestate Cases

	Ranges in Acreage							
	Under 40	40-79	80-119	120-159	160-199	200-239	240-up	Total
Situation as of the date of death	0	18	8	5	3	0	2	36
Situation directly resulting from death or settlement, or related to resulting undivided ownerships.	1	16	7	3	4	2	4	37
Situation as of April, 1951	1	14	9	3	3	3	4	37

In the 28 testate cases where the owner died since 1925, there were 25 separate tracts involved. Of this number, there is evidence of 4 instances of physical parcellation occuring as of the date of death, under the provisions of the will. In 3 of these instances, the original tract was split into 2 parcels, mostly about 40 acres each, though in one case a 470 acre tract was split into a 320 and a 150 acre parcel. In the fourth instance a 216 acre tract was split into 6 separate parcels, one 10 acres in size and the rest mostly 40 acres. Five parcels went individually to 5 different children. The other, a 40 acre tract, went to 7 grandchildren, each holding an undivided 1/7 interest. Two tracts, 40 and 46 acres each were combined about 4 years later. As for the other 3 instances of parcellation mentioned above, in one case the original 80 acres was completely reconsolidated about 3 1/2 years later, during settlement, upon sale to a non-relative. In another instance, 4 acres of one 36 acre parcel was split off and consolidated with the other 56 acre parcel about 6 years later, but 17 years later, in 1949, this latter parcel was further split into a 20 and 40 acre tract, 20 acres being conveyed to a non-relative. All this occurred after the estate had been settled. The two parts of the 470 acre tract have remained unchanged.

Besides the parcellation resulting at the time of death, there was one further instance of parcellation resulting during settlement of the estate. A 167 acre tract was split into 3

parcels, a 47, 40, and 80, by agreement of the devisees. The latter two tracts were later combined, but still later, split again (as before). In two other instances parcellation occurred after the estate had been settled, though it occurred while the original tract was still held in undivided ownership among the devisees. In one of the 2 instances there was a further parcellation, but this was reconsolidated.

All of the parcellations occurring on death, or during settlement or a period of undivided ownership, occurred before 1941, except for one in 1949. Offsetting these parcellations there were, besides those already mentioned, 5 instances of consolidation occurring during settlement, one at death, and one after settlement and undivided ownership had ended. Table 2, page 87, portrays the effect of the conflicting pressures of parcellation and consolidation. The numbers in the respective columns indicate the number of tracts falling within the designated range in acreage. The few instances of partial consolidation have been omitted.

Table 2. Effect of Parcellation and Consolidation on Ownership Units-Testate Cases

	Ranges in Acreage							Total Tracts
	Under 40	40-79	80-119	120-159	160-199	200-239	240-up	
Situation as of the date of death	0	6	12	1	3	1	2	25
Situation immediately after death	2	11	11	1	3	1	2	31
Situation resulting during settlement, or related to resulting undivided ownership	4	10	13	1	3	1	2	34
Situation as of April, 1951	4	9	11	3	3	1	2	33

Nature and Extent of Undivided Ownership.

We have noted previously that there are at least 4 general types of undivided ownership. While undivided ownership among coowners with a present right of possession was found to be the most common type, the other types should not be ignored, for they may all give rise tocertain difficulties. In fact, undivided ownership over time, as between a life tenent and remainder men, may in some cases be more troublesome than the more common type. The life tenant may often hold a short time view point and may thus be inclined to get all she or he can out of the property, and to contribute to deterioration of soil and farm improvements.

Considering all types of undivided ownership, in the intestate cases where the owner died since January 1925, the number of heirs averaged something over 4, while the number of undivided owners immediately after death averaged closer to 5. This difference arises from the fact that, in a handful of cases, the deceased owners held only a fractional interest and there were already other owners involved. A sole heir was involved in only 6 of the 40 cases, and 2 of these involved duplication of the same owner. In only 3 cases was there a single owner, though in a few cases the undivided ownership resulting was merely a continuation of that already existing. The number of heirs ranged as high as 24 in one case, involving one brother and the children of deceased brothers and sisters. There were 11 in another, 9 in 3 cases,

and 8 in another. In the remainder of cases, less than 8 heirs were involved.

The number of coowners involved was no greater than the highest number of heirs. The greatest number of coowners in cases where the deceased had held only a fractional interest was 8. All of these heirs or other coowners became or already were coowners of a present interest in the respective tracts immediately upon death, with one exception. In that case the same owner held a dower interest which had earlier been assigned to her, before 1925, in her husband's estate proceedings, he having died intestate. In no case had dower been assigned since 1925. In two cases (involving the same tract) both of the owners who died since 1925 were themselves devisees of a fractional interest under the will of an owner who died testate prior to 1925. In one case the number of undivided owners was actually increased only by 2, and in the other by 3, even though there were 5 and 6 heirs, respectively. This situation arose because some of the heirs were also devisees of the previous owner.

The range in fractional interests held by the respective heirs and other coowners in the several tracts varied considerably. The smallest interest observed was a 1/35 interest in the case where 24 heirs were involved. In this case the interests ranged from 1/35 to 1/7. In another case the smallest interest was 1/24. However, this was a case in which some heirs were also devisees of a prior owner so that there

were already four 1/4 interests in the property. In most instances the undivided interests ranged from something like 1/5 to 1/3, though there were 7 instances, involving slightly more tracts, where there were but 2 coowners, each with a 1/2 interest.

When we consider the time taken to end these undivided interests we are faced with a small dilema, for in a few cases undivided interests were already in existence, having been created by intestate (and in 3 cases, testate) deaths occurring before 1925. In one of the 3 latter cases the intestate death occurring after 1925 actually effected a termination of the undivided interests held by the devisees, for the interest of one thereby passed to the other, who was his sole heir.

Of the cases where an owner dying since 1925 had held full title, any undivided ownership resulting has since been terminated with respect to all but 4 of the 32 tracts involved. Of the remaining 28 tracts, it was ended in a little over 3 years, on the average, though it is somewhat treacherous to attempt to rely solely on any average figure in explaining the situation. On 11 tracts it was ended within a year (in one case in 3 months when the tract was deeded to a non-relative, and in the same manner in 2 other cases). On 19 tracts, within 2 years. On 3 tracts over 8 years were required, the longest time being practically 14 years. We should note, however, that this was the case previously mentioned, where the owner had died leaving a will which was never admitted

to probate. In this case there were at first 3 co-owners involved, then 2, upon the intestate death of one of them. In one case undivided ownership among 8 heirs continued for over 12 years, except for the setting off of 20 acres to one of the heirs in partition proceedings, discussed earlier. The great bulk of this undivided ownership was between members of the immediate family of the deceased owner, though in a number of cases brothers, sisters, and parents were involved. A widow was involved in but 5 of these tracts. The most distant relation were first cousins. In one instance, the interest of one heir was sold (to pay his debts) to a non-relative, who became a co-owner. Both of the cases in which the deceased owner held a fractional interest which had resulted from the intestate death of a prior owner, before 1925, resulted from the death of the same prior owner. Undivided ownership on this tract was not ended until 31 years after his death, the co-owners being first a widow and two daughters, then a widow and one daughter upon the intestate death of the other daughter, then finally but one daughter upon the intestate death of the widow.

In the 4 cases where some type of undivided ownership still existed in April, 1951, it had continued for about 3, 8, 9, and 14 years, respectively. In the latter case, two sons became co-owners, though they later placed the title in jointtenancy among themselves and one son's wife, with rights of survivorship. In the first case the number of undivided owners has been reduced from 3 to 2, one heir selling out to

another. In the other two cases, the widow and other heirs arranged to give the widow a life estate, with the remainder in one son, in one case, and in 2 children and a deceased son's wife (who was his sole devisee) in the other. A few instances were noted where undivided ownership was again created after the original undivided ownership was terminated. One should hesitate to consider this to be related to the death of the original owner, however, except perhaps where any resulting parcellation has continued on beyond the original period of undivided ownership, and up to the beginning of the new period. These instances were so infrequent that we will not analyze them here. In one case, undivided ownership had ended, except for the reservation of mineral interests in those heirs who had been bought out by one heir.

Various methods were employed to terminate the undivided ownership observed in the above mentioned cases. In most cases termination was effected all at one time. About half of these instances resulted from the sale of the property to a non-relative, either during settlement or afterwards. In the rest of the cases, usually one heir either bought out or was given the interests of the others, though in a few cases the death of an heir or, in one, a sale on mortgage foreclosure, ended the undivided ownership. In a few cases the number of undivided owners was reduced in steps. For example, in one case an administrator's deed conveyed the property to 2 of the original 4 heirs. Then they later conveyed the tract

to a non-relative. In 21, or over half, of the cases, undivided ownership was terminated during settlement of the estate. Of this number 8 terminations occurred at or just before final settlement of the estate.

Turning to the testate cases where death occurred since Jan., 1925, the average number of devisees receiving an interest in the respective tracts was about 3 as compared to something over 4 heirs in the intestate cases. No definite information was obtained on one case where the estate was probated elsewhere. In 13 of the remaining 27 cases there was but a single devisee, though in some of these cases the deceased was a co-owner himself, and the devisee merely took his place. There were actually a few less undivided owners immediately after death, than there were devisees, for the instances where there were additional co-owners involved were more than offset by the instances of parcellation provided in the will discussed previously. For example, in the one instance where 6 separate tracts were created, there were 12 devisees, but only 5 of them were given the tracts individually. In the instances where undivided ownership was created on death the fractional interests resulting ranged from 1/21 to 1/2, though, except for a 1/10 interest, all other interests were no smaller than 1/7. In 4 instances there were but 2 co-owners. In 2 instances a life estate was given to a widow or daughter, with the remainder in some other person or persons, and in 2 cases the title was placed in joint

tenancy or tenancy by the entireties between 2 co-owners. In the 23 cases where the deceased owner held full title, undivided ownership resulted in 13. It has since been terminated in 11 of the 13 cases. It was terminated in a little over 5 years on the average, though such an average may be more or less treacherous to rely upon in explaining the situation. It was terminated within a year in 3 of these 11 cases, and within 2 years in 4, the earliest being 7 months. In 4 of the 11 cases it required over 10 years, about 10, 11, 13, and nearly 21, respectively. In the 2 cases where the undivided ownership still continued as of April 1951, the longest period had been nearly 18 years to that date, and the other over 9 years. Two other cases of undivided ownership are traceable to the earlier death of prior owners, both of whom died intestate since Jan., 1925. The length of time taken to end the undivided ownership in these 2 cases has already been included in the above analysis of cases.

In all of the foregoing analysis of undivided interests, we have elected not to consider co-ownership between a husband and wife as undivided ownership, since it is less apt to create difficulties than co-ownership between persons with somewhat less affinity for each other. In a few of the cases where undivided ownership is reported to have ended, there actually was co-ownership existing between a husband and wife.

Whether the Real Estate Stayed in the Family. Of the 40 intestate cases where death occurred since Jan., 1925, the property stayed within the family in about half of the cases. In all but 3 cases, this meant the deceased's immediate family. In 3 cases the property had gone to brothers, sisters, or parents, or some combination thereof. In 7 cases it had gone entirely to one son and in 3 other cases a son held a part interest along with other family members. In one case, the property was divided and the major portion was conveyed out of the family.

Out of the 26 testate cases upon which information was obtained, the property stayed in the family in 14 cases, and at least half of it stayed within the family in 3 other cases. In another case, the property went to one who had been considered one of the family, though not related. The property went entirely to a son in 4 cases, partially in another case, and to a son and other members of the family in 2 other cases.

In about 4 of the testate cases the property appears to have been later conveyedout of the family after settlement, and the period of undivided ownership and parcellation, had ended. But this cannot be said to be directly related to the death of the original owner.

As for the above analysis, while we can be certain of the cases where the property stayed in the family, there may have been a few additional cases where the property stayed in the family, since conveyances are reported to have been to non-

relatives whenever the name of the grantee on the deed indicated that he was apparently not one of the family, or in case of a deed to a husband and wife, that neither was apparently one of the family. However, in later personal interviews held with respect to the most recent (nearly half) of the intestate cases, the findings obtained from deed records was substantiated.

Possible Evidence of a Few Trends. Information was obtained in cases, both testate and intestate, where the owner died before Jan., 1925, but the resulting undivided ownership was still continuing on said date. While it is obvious that these cases have been somewhat arbitrarily selected, they may be useful in indicating some possible trends. The most striking observation is that, in the earlier intestate cases, undivided ownership had continued for over 5 years in nearly all of the cases where the owner involved had held a full interest on death. In about half of these 12 cases it had continued for over 20 years. In 2 cases for 31, and over 34½ years, respectively. We have already noted that in the cases where death occurred since 1925, 14 years was the longest time taken to end the undivided ownership and 8 years or more was required in but 4 cases. In the 4 cases where undivided ownership was still continuing, it is conceivable that it may extend to 30 years, but there would appear to be some justification for suggesting that the trend is toward earlier termination of the undivided ownership.

In the few (6) testate cases upon which comparable information was obtained, undivided ownership continued for up to 44 years in one case, over 30 years in 2 cases, and over 10 years in all but one. There would therefore appear to be a comparable trend in the testate cases. Incidentally, in one of the earlier intestate cases, although no undivided ownership resulted, no administration proceedings were ever held, a Determination of Heirs being made 20 years later.

It has already been noted that no actual parcellation has occurred, in the intestate cases, since 1938 (except for 12 acres of a 160 acre tract which was traded for an adjoining 10 acres). There was little evidence of parcellation even before that time.

As for the opening and closing of estates, there would appear to be no significant trend in progress. The time taken to open and close estates in the period where death occurred since Jan., 1937, approximates the data already reported for the period where death occurred since Jan., 1925. For the latter period as a whole, there are only two instances where an estate has not been opened. A Determination of Heirs was made,in each case, the latest such determination being made prior to 1943.

In the more recent intestate cases, the respectiv e tracts involved were conveyed out of the family in only about 1/3 of the cases, as compared to about 1/2 of the cases for the 1925 - 51 period as a whole.

Effect Upon Farming Operations. After the court house records had been gleaned in search of the information we have just analyzed a study was made with respect to the more recent cases to obtain more detailed information concerning how estates are settled under the laws of descent and distribution, including the costs involved. We were also in search of information about the effect of the operation of these laws upon farming operations. For these purposes, it was determined to select, from among the intestate cases already discussed, those cases in which the owner had died since Jan., 1937. Since interviews were to be obtained with one or more of the persons involved in, or acquainted with, the settlement of the deceased's estate, it was deemed best to go no further back into history, for want of reliable memories. Also, by stopping at 1937 we would help avoid getting too much coloration from the great depression era. This 1937 - 51 period yielded 18 cases for study, involving 20 separate tracts and 18 deceased owners.

The first step taken was a detailed scanning of the estate file involved in each case to acquire information on such factors as who was appointed administrator, the nature of the property held by the deceased owner, the settlement procedures employed, whether a widow's allowance was granted, whether and what farm income was received by the administrator, whether there was evidence of any friction among the heirs, and the estate costs reported by the administrator in his annual or

final account. This information was not only useful, as such, but enabled me to get a fairly good picture of the situation at hand before attempting to obtain personal interviews. It also often gave me clues concerning particular questions to ask in interviewing. It also was useful, upon occasion, in helping refresh the memory of the person interviewed. In most cases it largely substantiated the information obtained in the interview, but it disclosed a partially erroneous memory in a few interviews. The information from the estate file was also augmented by references to mortgage records to determine whether a mortgage was assumed by purchasing heirs, and when and if said mortgage was later discharged.

The next step was the personal interview itself. Since there was considerable variation in the extent of detailed information reported in the estate file, and because of the variety of cases to be interviewed, it was determined not to rely on a schedule, but to obtain, in each case, such information as would be necessary to produce a relatively complete portrayal of the facts at hand. In several cases the viewpoints of two or more persons were obtained. In only one case had no estate proceedings been opened, and in that a Determination of Heirs had been made.

A descriptive report of each of the 18 cases is included in Appendix I. These reports have drawn not only upon the information obtained as described above, but also upon the information previously acquired in the initial study of court

house records. Each report constitutes an attempt to portray at least some of the interrelations to be found in the facts of each case. The writer found these interviews to be most interesting, and was more than pleased with the cooperation he received. At least one, and sometimes two or three, interviews were obtained in each case - with an heir, the administrator, or whoever might be well acquainted with the case. Where the tract in question was found to be part of a larger operating unit, the report nevertheless focuses primary attention upon this tract, often describing arrangements with respect to property other than this tract only in rather general terms.

Because of the variety of the limited number of cases involved no attempt will be made here to do other than point out the more salient general findings. There was a sole surviving heir and owner in only one case. In about a third of the cases the farm was already being rented out to a non-related tenant, who usually was operating the tract in question as a part of a larger operating unit. Usually this arrangement continued during settlement of the estate, and sometimes even afterwards. In all but one of the 5 cases where the farm tract in question was conveyed out of the family in settling the estate it had been operated by a non-related tenant at the time of death.

In a few cases a son had been operating with a deceased father, the father and son sharing ownership of the farm per-

sonalty. In a few other cases the son was, in effect, renting from the father, owning all of the farm personalty. In still other cases, a son or daughter was farming the tract involved, with a now-deceased widow sharing in the income and expenses. In most of these cases the son (or daughter) has continued to operate the tract in question. Quite often the tract in question did not constitute the entire operating unit, but the operating unit usually continued as a going concern.

In most cases where a son (or daughter) had been operating the tract in question he has either continued to farm it and acquire ownership, or at least to retain a part interest in its ownership. In a few cases, however, the farm has been partially rented out to non - relatives (See Cases 2 and 15) or has been conveyed out of the family (See Case 9). In one case, the son had been given no assurance that he would get the farm in question, so he refused to put any improvements on the place and the buildings had been allowed to run down. He has since bought out the only other heir, a sister, and now has improved the place considerably. See Case No. 1. In another case, the son could not prove his alleged part ownership of part of the farm personalty, and is somewhat put out about it. He has continued to farm the place, with the widow sharing in income and expenses. There are two other undivided ownership interests involved. All heirs have conveyed their interests to the widow, with she deeding the property back to them, reserving a life estate in herself. The farm-operating

son is skeptical about attempting to buy out the interests of the other heirs "at these inflated farm prices." He doesn't know what he'll do. He claims the father had promised to will the farm to him, but failed to carry it out. He and the widow have bought out the other heir's interests in the farm personalty, though one obligingly released his interest "free gratus." See Case No. 3.

There are at least 3 cases in which resulting farming operations on the tract involved appear to leave something to be desired. See cases 9, 13, and 17. In one case the tract in question has laid idle, though it is a tract of swamp land with reputedly few tillable acres. While the laws of descent and distribution probably are a contributing factor to the situation found to exist, sometimes there appear to be other factors involved also. And in one case the difficulty may be at least partially attributable to the testate death of a prior owner. In this case, there had also been an intestate death of one of the sons prior to the death of the widow whose estate settlement was under consideration. See Case No. 17.

Undivided ownership of the real estate has continued to the present time in 5 of the 18 cases. This fact has already caused trouble in one of these cases, i.e., Case No. 3, already alluded to. It may also give rise to trouble in at least one other case (Case No. 4). One of two sons who are heirs of a deceased widow is now farming the place, but there is some question as to who owns what part of the farm personalty. In most

instances where one or more of the co-owners have been operating the tract involved, that person (or persons) has paid all the expenses and received all the income.

In a few instances the tract had been rented to a brother (or sister's husband). See Cases 5 and 13. The last case (No. 18) is unique, in that the deceased widow, and her deceased husband before her, had both left wills, neither of which was ever formally presented for probating. In the case of the widow's will, it appears to have devised specific real estate which she did not own anymore at the time of death.

Turning to the effect upon owner-operatorship, we find that the tract in question appears to have been rented out at the time of death in all but 5 cases, though in most instances it was a case of related tenancy, and in several instances the tenant was a part owner. In 4 cases the tenant was not related to the deceased. Of the remaining 5 cases, a co-owner or co-owners were operating the place. In 3 cases, and there was a father and son (or daughter) partnership in the other two. The situation resulting can be regarded as an improvement, if measured by the extent of tenancy resulting, for only 4 cases of tenancy continued, and 2 of these have since turned into owner-operatorship. Only in the one case where a father and daughter had been operating in partnership did any new instance of tenancy result, the place being rented to a part owner. The number of tracts operated by a co-owner or by co-owners has remained substantially unchanged. The former co-owner-operations have since turned into

full owner-operatorship, but new instances have emerged from prior related tenant operation.

In a number of cases the one eventually acquiring ownership had become advanced in years, but in some of these he had already acquired other farm land before finally acquiring the tract in question.

There were relatively few instances where an existing mortgage was involved or where the purchasing heir or heirs mortgaged the tract in order to buy out the others. In most instances no particular difficulty was reported to have been encountered in paying off these encumbrances, but there were exceptions. See, for example, Case No. 17.

Assertion of Widow's Rights. Dower was not assigned in any of the 8 cases where the deceased left a widow, though in one case dower had previously been assigned to the deceased widow involved. This was a unique case in which she had also acquired a half interest in the tract in which dower had been assigned, upon the death of a daughter, being the sole heir of the daughter's half interest. See Case No. 16. A widow exercised her rights to select up to $200 personalty and receive a widow's allowance in only one case, case no. 7. However, I observed no instance where the widow had suffered any particular hardships.

Evidences of Friction Among Heirs: Settlement was apparently effected with no or little friction among the heirs in several cases. However, distinct evidence of friction was encountered in a few cases. See Cases

3, 5, 11, and 13. It is quite probable that other incidents where friction occurred were not reported. In one case the heirs are reported to have avoided repetition of friction occurring after the previous death of the deceased widow's husband, by getting an administrator from outside the family. An administrator outside the family was appointed in nearly half the cases. This resulted, in a few instances, when friction developed at the hearing on the appointment of one of the family as administrator. See Cases No. 5 and 11. Such administrators included real estate men, neighboring farmers, lawyers, and bankers.

Estate Costs. An attorney was employed to assist in the settlement of the estate in only 6 cases. Usually, help was obtained from bankers and others, or from the probate judge himself. In the latter instances, the judge involved was a layman. The attorney fees, as reported in the administrator's final or annual accounts, were about $29, $50, $90, $114, $115, and $358, respectively. In the first instance, the attorney had not been employed to represent the estate throughout the entire proceedings. In the latter case, there was evidence of friction among the heirs which may have justifiably contributed to the amount of the fee charged. See Case No. 5. The same might be said for the adminstrator's fee $357 fee in this case, though the administrator reported that he had also performed services normally supplied by a broker in selling the tract in question. In this and other cases (also where friction was involved) the administrator was allowed a fee somewhat larger than the statutory fee permitted in

the usual case. See Case No. 13. In the latter case, in addition to the friction involved, property including a store and an oil station, was sold during settlement of the estate.

In 6 cases no administrator's fee was charged. In all but one of these, the administrator was one of the family. In 5 other cases the fee was not over $75 and seldom approached the maximum allowed by the statutes. In 4 cases it was over $100, being about $142, $285, $357, and $337.50 (plus $46.20 for expenses), respectively. In the latter 3 cases an administrator had been obtained from outside the family, but in each case there had been friction among the heirs, and the tract involved, and sometimes other tracts (and even in one case, a store and oil station) was or were sold in settling the estate. See Cases No. 5, 11, and 13.

Probate court fees were nominal in most cases, exceeding $10 in only 4 cases. The highest court fees reported were $21.30. Registration fees seldom went above $2.00. Publication fees ranged from about $4.80 to $7.00 in most cases, though were between $30. and $40. in 3 cases. The cost of the administrator's bond was reported in only 5 cases. Where reported, it ranged from $10. to $35., being over $20. in but 2 cases. In 3 cases, the cost of an additional bond on sale of real estate was reported, ranging from $40. to $37.50. Appraiser's fees were reported in only 9 of the cases. Of the cases reported, the cost exceeded $10. in 3 cases, each requiring additional appraisals for purpose of sale of real estate.

It ran as high as $30 in one case where 3 separate appraisels were required. In 4 cases the cost did not exceed $5. There were miscellaneous costs reported in several estates, including telephone calls, etc. In cases where the tract involved, or some other property, was sold during settlement, there were also costs of abstract of title. Such costs were reported in 6 cases, ranging from $6 to $41.60, with all but one case being under $26.

There was considerable variation in the total estate costs reported. In a handful of cases the entire costs (and outstanding debts) were advanced by the heirs so that any necessity for selling the tract involved to pay debts and expenses was avoided. (In another case the place was sold to pay debts and expenses, though the widow bought it. See Case No. 9) Of the 17 cases in which estate proceedings were opened, the total costs reported did not exceed more than about $20 in 6 cases (less than $10. in 2). They did not exceed $100 in 10 cases. In the remaining 7 cases the reported total costs were about (175, $246, $266, $369, $507, $675, and $333, respectively. The third figure represents the costs only of ancillary proceedings, principal administration being held in the state the deceased had resided in. In the most costly 6 of these 7 cases an administrator had been appointed from outside the family. However, in the 5 most costly of these 6 cases, the tract involved, and sometimes other tracts, were sold under license of court. The administrator's fees in these cases

constituted from 1/3 to 1/2 of the total costs reported, and consisted of additional commissions based upon the value of the real estate sold. There were also attorney's fees in each of these cases. In addition, all 3 cases where the costs exceeded $500 were cases in which friction among the heirs had been reported. Each case involved an estate valued at between $10,000 and $14,000. In one case a store and oil station were sold, though this wasn't the costliest case (which was Case No. 5.)

In the one case where no proceedings were begun, other than for the Determination of Heirs, the only reported costs was $1.25 for court fees.

For comparative purposes, information was also obtained on estate costs in the testate cases where death occurred since January, 1937. In none of these cases did the executor's fee exceed $100. In 3 instances no fee was requested. Attorneys were employed at least at some stage in the proceedings in nearly all cases. The fees ranged from $15 to $231, usually not over $100. In one case the combined executor's and attorney fees were listed as $200. Court costs ranged from about $4 to $11. Total costs ranged from about $16 to $420, though the latter was the only case over $220. The foregoing is based upon only 8 cases. Information could not be obtained in one case where the executor had paid everything and didn't itemize expenses, and in another case, part of the costs had been mixed up with the deceased's wife's estate which was being

handled by the same personal representative. The only expenses found included in testate cases, which were not also found in intestate cases, were rather nominal fees for witnesses and for publication in admitting the will to probate.

For what it may be worth, the writer made one last observation with respect to the wills encountered in the testate cases analyzed. Of the 38 wills involved, including those cases where death occurred prior to 1935, 2 wills had been contested. In these, objections were filed to the admission of the will to probate. It was contended in each case that the deceased wasn't mentally competent when the alleged will was drawn and further that there had been undue influence exercised by the beneficiaries named in the will. The will was not upset in either case, and was admitted to probate. In 2 other cases, previously referred to, the deceased left a will which wasn't probated, apparently by agreement of all heirs. One will concerned specific real estate not actually owned by the deceased on death. In neither case had any formal objections to the will been filed in the estate proceedings, though no formal action had ever been taken to get the wills admitted to probate.

Current Application of the Law. Having examined the historical data obtained with respect to Orange Township, we now turn to a limited examination of the actual operation of the laws of descent and distribution, as currently applied.

For this information we have relied heavily upon a limited number of interviews with probate judges, and one deputy judge, in Ionia and 4 other counties in the Central Michigan region, largely in the rural counties.

The judges interviewed feel that most estates, once opened, are currently closed within 3 to 7 months. They had, of course, made no detailed appraisal, but were basing this on their general impressions. Most of them commented that tney would insist upon the appointment of an administrator from outside the family wherever there was any sign of friction among the heirs displayed either prior to or at the hearing on the appointment of some member of the family. The amount of the administrator's bond is commonly set to equal the value of the personalty as estimated in the petition for appointment of an administrator. This may be altered later if the inventory value is substantially different from this estimated value.

The administrator is said to commonly take charge of any farm land involved, (as is required by the law). It protects the estate and helps to minimize friction among the heirs with respect to the real estate during settlement. All thought this requirement to be good. Such duties give the administrator grounds for requesting an extra commission computed on the value of the real estate (in addition to his regular commission on the value of personalty he receives to administer). But it is reported that this is seldom requested, except where the real estate is sold under license of court. The heirs

involued aren't entitled to receive any farm income until part or all of it is distributed to them when the estate is settled. This was thought to be no great hardship, in view of the fact that most estate are settled up fairly soon. A partial distribution of the estate can be made earlier upon request, providing there is more than enough remaining to satisfy debts and expenses. This is not a frequent occurrence, however, and is discretionary with the judge.

It was the recommendation of most judges that any settlement among the heirs, particularly with respect to the farm real estate, be postponed until an assignment of residue has been made. The red tape and extra costs associated with any sale of real estate under license of court can thus be avoided. However, the judge will normally grant a license to sell if a majority of the heirs request a sale to one of them, or to some third person, for the purpose of facilitating the distribution of the estate, or where it is necessary to pay debts and expenses. In the latter event, one or more of the heirs sometimes advances the balance needed for such purposes, and a sale is thereby averted. Any heir may demand partition of the real estate, by decree of the probate judge, at or after the time the assignment of residue is made. Instances of this are said to be very infrequent, however. The same infrequency is reported with respect to sales of real estate at public auction under license of the court. Most such sales are private sales.

At least one judge reported that he would be very reluctant

to allow an administrator to grant a lease extending beyond the year current to the period of administration. He would also be reluctant to approve any settlement among the heirs with respect to the real estate, other than in the manner described above, for fear that it might place a cloud upon the title. It is recommended that such settlements be delayed until the day that the residue has been assigned, thus determining the heirs and their respective interests.

The heirs may, of course, make a settlement among themselves as to the real estate, without the judge's approval. The heir or heirs getting the property will have no assurance of a good title, however, until an assignment of residue had been made. The same thing applies with respect to any sale to a 3rd party without the judge's license to do so. Such purchaser is not entitled to receive income from such property until assignment of residue has been made, though one judge indicated that he might approve an agreement to give the purchaser the income prior to such time if debts and expenses can obviously be satisfied without the aid of such income. Even a contract for sale must be licensed by the court, in order to bind the estate.

Some judges appear to require that the widow be not only given notice of her right to take dower and homestead rights, but also of her right to select $200 of the personalty, and to request an allowance for herself and minor children. Such latter notice may not have been given in many of the cases reported earlier in our study, which may account for there being

only one case where an allowance had been made. All judges observed that the widow would only elect to take dower and homestead in an insolvent estate where no one was willing to advance enough to pay debts and expenses. So such rights are seldom asserted. Some remarked that the widow is well provided for under Michigan law.

Turning to the costs involved, we must immediately note one important factor. In some Michigan counties, particularly where the probate judge is or was a layman, the judge would often render considerable help, in giving advice and even in drawing up the necessary legal documents on printed (with blanks) forms. Consequently, no lawyer was employed in a good many cases. We have observed this tendency in our study of Orange Township, particularly with respect to the intestate cases. Recently, however, a lay probate judge in the Upper Peninsula campaigned on the issue, among others, that she furnished free legal aid. This led to a suit in the circuit court by the local bar association to enjoin her from rendering any such service in the future, on the grounds that she would be practicing law without a license and also that the nature of her services would disqualify her from passing judgement, as probate judge, upon the legal documents that she had helped prepare. The court ordered her to stop such activities in the future, relying on both of the aforementioned grounds. While this case has not been appealed to the Michigan Supreme Court it has, nevertheless, served as a deterrent to rendering of

such services by such laymen, and other judges, as had been previously engaged therein. Most of the judges interviewed say that they feel compelled to refuse to give legal advice, other than perhaps that of a mere mechanical nature. They more or less strongly recommend that a lawyer be employed, but don't insist on it. There still appears to be considerable variation as to the extent to which lawyers are actually employed.

The writer was interested in determining the extent to which estate costs may have risen since settlement of estates in the cases reported. He found little indication of any substantial increase, except to the extent that property values upon which the administrator's fee may be based has increased. Other more incidental expenses, such as publication fees and mileage allowances, have also increased somewhat in recent years. Further increases are not improbable in view of the rising general price level.

The usual attorney fees approved in most cases are said to run somewhere between $50 and $200. In a more urban county the report was $100 to $200, with the upper figure being more likely where real estate is sold during settlement. The compensation allowed must be based upon the nature and quantity of the services performed. The value of the estate is said to bear no direct relation to the fee. There is no state-wide minimum fee schedule in Michigan. Any local county or city schedules observed by practicing attorneys are reported to have little influence upon what the probate judge will approve. If there is a legal aid service

functioning in the county, the judge may refer persons to it for advice, but such services are operating largely only in the urban counties. In one county in the Upper Peninsula the probate judge reputedly has a file of lawyers who have agreed to allow cases to be referred to them in rotation. In each such case the lawyer must abide by the judge's determination of the proper fee.

Probate court fees are reported to average between $5 and $10 in the usual case (even in the more urban county). These fees are charged solely for furnished copies of letters of administration and a few other legal documents which are filed in the cause, free of charge. If real estate is sold under court order, the total fee will likely be $10 to $15. Publication fees are reported to vary between $4.50 and $7.00 per set of 3 weekly publications. There will have to be two such sets in settling any estate in which real estate is involved, even though all heirs have waived their right to notice.

The Legislature ammended the statutes within recent years to absolutely require publication of notice of hearing on the final account in case real estate in involved, whether or not all heirs have waived their right to notice. The judges interviewed considered this requirement to be unjustifiable. It was adding to the estate costs, for no good reason.

Administrator's fees may properly be computed as a commission on the personalty received for administration, plus a commission on the real estate, if sold, or otherwise in the discretion of

the judge. The judge indicated however, that no, or only a nominal, fee is charged by many of those administrators who are one of the family. Sometimes an administrator who is not one of the family will agree with the heirs to handle the estate for a set figure. The judges appear to feel compelled to allow any fee which does not exceed the statutory limits. Real estate man acting as administrators may properly charge brokerage fees as well, upon a sale of any real estate. Many are reported to not take advantage of this, however.

Professional bondsmen usually charge a minimum fee of $10, and at the rate of $5 per $1,000 on the amount of the administrator's bond, for any period less than a year. The fees charged by the Register of Deeds for recording an assignment of residuare nominal, about $1.75. If real estate is sold under court order, the license to sell and the order confirming the sale must be filed, at about $1.75 each, in order to keep the title in marketable condition. None of the judges could see any significant difference in estate costs as between testate and intestate cases, except that an attorney would more likely be employed in a testate case.

It was thought that the state inheritance tax is an unimportant factor in the usual case, because of the liberal exemptions and low rates. The Federal estate taxes and State intangibles taxes are even less of a factor to consider. There is little or no advantage accruing to the heirs or administrator who influence the appraisal of estate property to be set low with a view to influencing any appraisal made for inheritanxe tax purposes.

The tax would usually be nominal or nil, anyway, and the appraisal set for inheritance tax purposes may be relied upon as the basis for figuring capital gains taxes in the event the property is later resold by the heirs. A low appraisal would thus work to their disadvantage. If set too low, it may be amended, thus increasing any inheritance tax due, but decreasing the amount of any capital gains taxes that may accrue later.

SUMMARY AND GENERAL CONCLUSIONS

The foregoing description and analysis of the library and field research conducted has, it is hoped, thrown some additional light upon the questions which gave rise to the three objectives of our study. Since we are interested primarily in the actual operation and effect of the laws of descent and distribution, no attempt will be made to summarize the analysis of the law in the books, except as it is reflected in the analysis of the law in operation.

Having selected Orange township in Ionia County as our area of observation, we proceeded to conduct a historical study of the operation and effect of the law, in actual practice. For this initial part of the study we relied upon court house records. While certain information was acquired with respect to earlier cases, our analysis has dealt primarily with those cases in which a deceased owner had died without a will or other legal arrangement for disposing of his land, since January, 1925 - holding either a full or fractional interest in any tract of farm land which was 40 acres or over. The analysis has also dealt with testate cases falling within the same period, for the purpose of making certain comparisons. Lastly, some attempt was made to analyze the current situation in the central Michigan area.

Our first rather startling finding was that there was more evidence of actual physical parcellation of ownership

units in the testate cases than in the intestate cases. There was very little evidence of any actual parcellation in the intestate cases. We found a much more serious problem to be the extent of resulting undivided ownership interests, and the length of time in which farm land remained held in undivided ownership. There was less evidence of undivided ownership resulting in the testate cases. Undivided ownership was found to have resulted in the great bulk of the intestate cases where death had occurred since January, 1925, though in a few of these cases it was merely an alteration of undivided ownership already existing. The undivided ownership has since been terminated on all but 4 of the tracts involved, but over 3 years was taken to accomplish this, on the average, with a few cases requiring over 8 years. In from 1/2 to 2/3 of these cases, however, the undivided ownership was ended within 2 years. As finally settled, the tract involved appears to have stayed within the family in about 1/2 of the cases.

Estate proceedings were opened in nearly all cases. The length of time taken to open estate proceedings was relatively short, within a month in most instances, both for the testate and intestate cases. In about 1/2 of the intestate cases these proceedings were closed within a year, and about 2/3 within 2 years, from the time opened.

To determine the effect upon farming operations and the more detailed aspects of settlement procedure, all intestate cases where death had occurred since January, 1937, were se-

lected for study. Information from court house records was augmented by personal interviews. Because of the variety of cases involved, it is difficult to draw any reliable generalizations therefrom. In a number of the cases the tract involved constituted part of a larger operating unit at the time of death, and this situation often continued. In most instances, farming operations do not appear to have suffered seriously, though there was evidence of disrupting influences in some cases. The administrator took charge of the real estate involved while the estate was being settled. This may have helped prevent friction among the heirs, but evidence of friction was nevertheless apparent in a few of the cases. The extent of farm tenancy was actually decreased under th operation of the laws of descent and distribution, and the resulting owner-operators appear to have experienced fair success in attaining unencumbered ownership.

Dower and homestead rights were asserted in none of the cases interviewed, and a widow's allowance had been granted in only one instance.

Estate costs do not appear to significantly differ for either testate or intestate cases, except that there has been demonstrated to be a tendency to get by without employing an attorney in most of the intestate cases. The costs do not appear to be unreasonable in the usual case. The most costly cases were those where real esta te was sold under license of court, where friction among the heirs was prevalent, or where

both situations existed together. Because of a recent circuit court decision, attorneys are more apt to be employed in the future than formerly, at least in certain counties, in both testate and intestate cases. Inheritance and estate taxes are a relatively unimportant factor in most cases.

The findings reported herein certainly suggest that there is room for improving the intestate method of transferring ownership of Michigan farm land and farm personalty, though in some respects the actual effect upon the ownership and operation of farm land observed in this study may lead some to feel that the overall effect has not been as undesirable as is perhaps commonly believed. While the proper approach may well be to urge farm land owners to enter into some type of a transfer arrangement prior to death (by will, sale, gift, contract for sale, joint deed, or otherwise) the writer is of the opinion that a substantial part of farm land will nevertheless be apt to be transferred on death, under the operation of the laws of descent and distribution. It therefore would seem desirable to conduct educational or other efforts directed toward improving the manner in which estates are settled.

While the primary purpose of this study has been to throw additional light upon the actual operation and effect of the laws of descent and distribution, we will offer at least some general suggestions for improving the situation found to exist.

In general, it would seem desirable, among other things,

to make recommendations for the earliest possible closing of estates and termination of resulting undivided ownership. The opening of estates, and actual physical parcellation, on the basis of the findings herein, appear to present no major problem at the moment. So far as estate costs are concerned there is room for improvement. Costs have been increased substantially whenever real estate is sold under license of court. It would seem desirable, in most cases, for the heirs to urge prompt settlement of the estate and delay formal settlement among themselves with respect to the real estate until an assignment of residue is made. Administrator's and attorney fees have been shown to be a major cost item in most cases where administrators are appointed from outside the family, or attorneys are employed. The allowing of administrator's fees computed on the value of property administered does not seem justifiable as a general proposition.

In a matter as complicated and as important as the settlement of estates it would seem desirable to obtain legal counsel for the protection of all concerned. Those farmers who are, in general, loathe to employ legal counsel, should be apprized of the fact that the fee of the attorney who represents the estate must meet with the approval of the probate judge, and that the fees approved are generally commensurate with the nature and quantity of the services rendered. Expansion of legal aid, or other similar services, into rural counties may also help.

Friction among the heirs is usually costly. Making this knownmay help to reduce it somewhat, though substantial improvements along this line are not too likely to be forthcoming.

As for alternatives to farm land transfer under the laws of descent and distribution, the findings have at least thrown some light on the need for improving the testate method of succession. This was particularly noticeable with respect to the extent of physical parcellation resulting in the testate cases studied. We also noted, however, that contested wills appear to be very rare, and instances in which the will is actually defeated are even less frequent.

The writer is well aware that these general suggestions are based upon the study of a limited area. The writer does not pretend to assert that the findings of this study are necessarily representative of the state, or even of the central Michigan area in which the township studied lies. He is aware of no significant factors, however, which should lead results obtained in other similar farming areas to substantially differ from those reported herein, except that the greater tendancy to employ attorneys in some counties may increase th estate costs. The best that he can hope is that some further light has been thrown upon the problems involved. He also hopes that further research in this area will have been stimulated.

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Legal citations. See Appendix II.

APPENDIX I.: CASE NOTES

Following is a case by case descriptive report of 18 cases in which personal interviews were obtained. The written description of each case is based upon field notes on interviews held with administrators, heirs, and other persons involved in, or acquainted with, the respective cases. At least one, and sometimes two or three, interviews were obtained in each case. Each descriptive report has also drawn upon information contained in the relevant estate file or files, and upon information obtained from deed records, etc., at the Ionia County court house. An attempt has been made to give the reader a rather comprehensive view of the situation found to exist in each case.

Case No. 1

160 acre tract with house and buildings. Male owner died without a will in 1941 holding full title, subject to a $6000 mortgage to the Federal Land Bank, $5400 of which remained due and payable. He left a son, age 50, and daughter, age 56, surviving. His wife had died previously. (Interview obtained with the son and his wife together.) The son had been farming the place along with the deceased owner, who was living in the house, at the time of his death. The deceased had been taking little active part in farm operations. The son had what he considered to be an oral 50-50 crop and livestock share lease. The deceased held a half interest in all the farm machinery (except for a tractor which the son owned) as well as in the livestock and other farm property. The son was married and lived on an adjoining 40 which he owned. He farmed this 40, plus about 80 more acres which he rented, along with the 160 acre tract in question. His sister was married to another farmer in the neighborhood. The deceased had never indicated that the son who farmed the place should get it, so the son wouldn't put any improvements on the place before his father died. The buildings had been running down.

Estate proceedings were opened in 8 days and closed 7 months later. As there had been some friction among the

heirs in settling up the mother's estate, the son urged and succeeded in getting an administrator from outside the family - who was the township supervisor and a farmer in the neighborhood. (he put up $1500 bond.) The son thought that his sister and her husband would be less apt to start trouble with such an administrator. Everything went off smoothly because of this decision (according to the son).

This is at least partly substantiated by the fact that no evidence of friction appears in the estate files in this case. No extraordinary proceedings were required, both the heirs waived notice of and consented to the judge's appointment of the administrator and allowances of the final account, and no one appeared in opposition to his order allowing claims which had been filed. While the estate was being settled the son continued to operate the farm under the same arrangement as before (and along with the same other tracts). He turned over half of the milk checks and other farm income to the administrator. The administrator paid the taxes on the farm real estate (which had become delinquent) and half of the farm operating expenses, including custom work (conbining and corn picking) and fertilizer for wheat and barley.

The son arranged to buy out the sister's interest in both the real estate, which had been appraised at $7700, and the deceased's half interest in the farm personalty, including livestock, farm implements, and grain, hay and other farm produce on hand. The son agreed to assume

the balance due on the mortgage and gave his sister $500 in cash and a $700 note for her half interest. Accordingly the sister deeded her half interest in the farm real estate to the son. This was done on the same day that the court assigned the residue of the estate (including the real estate) to the respective heirs and allowed the administrator's final account. So the farm passed to the son as a going concern. Although the son had had nothing in writing to prove his ownership of a half interest in farm personalty neither the administrator nor his sister contested his assertion as to this. The son feels that he would not have succeeded in arranging to take over the farm if he or his sister had served as administrator.

The estate costs reported in the administrators final account (the administrator is now deceased) are as follows:

Administrator's fee	$50.00
Probate Court fees	6.75
Registration fees	1.05
Publication fees	4.80
Total	$62.60

There was no inheritence tax to pay. No attorney was employed. Appraiser's fees, if paid, were not reported. The son feels that the administrator's fee was very reasonable and that the administrator really took hold of things.

The son has continued to farm the tract in question along with the adjoining 40 which he owns. He has also continued to rent various other tracts in the neighborhood, usually farming about 300 acres all told. He has sold off about 12 acres but has bought about 10 adjoining acres in its stead. He has built the dairy herd up to about 55 head, including replacement stock, and has improved the dairy barn, house and perhaps other buildings. He appears to be doing an excellent job of farming the place and has a reputation for being a superior farmer. He succeeded in paying off the mortgage ahead of schedule, within 5 years after his fathers death.

Case No. 2

87 acre tract with house and buildings. Male owner died without a will in 1942, holding full and unencumbered title. He left a surviving widow and a married son (age 39). (Interview obtained with both). Two brothers (neighbors), had been renting the farm along with the 40 acre home place where the deceased and his wife were living. They farmed these 2 tracts along with about 100 acres of their own near by. The 40 acre place had been held by the widow and the deceased in joint ownership, by the entireties, so that the widow acquired full title to it on his death-by right of survivorship. The house on the 87 acres in question had been

rented to someone who worked in town.

Estate proceedings were opened within 2 months and closed 5 months later. The son was appointed administrator on putting up $500 bond. The renters continued to rent under the same arrangements as before. The son, who was married and had been living and working in town, now moved into the house, but continued to work in town. The deceased had no farm personalty on either of the 2 farms. The son as administrator, paid the taxes on the 87 acres while the estate was being settled. On the insistence of the widow, who was well enough off, he kept the rental income. As the deceased had no personalty of which could be used to pay expenses, etc., the widow and son advanced the funds necessary to pay debts and estate costs. They thereby avoided any necessity to sell the farm to pay these claims.

The son continued to look after the farm. The year after the estate was settled he rented it to one of the best farmers in the neighborhood, on a 2/3 - 1/3 crop share basis. This arrangement has continued to the present time, the renter farming it along with his own farm and other rented land (not adjoining this place) - about 300 acres all told.

The widow insisted that the son keep all the rental income, since he was an only child and had always been kind and more than fair to his parents. So he insisted on paying the taxes, insurance, and all other landlord expenses. No livestock was kept for awhile, but the son now has a flock

of sheep which he runs on part of the pasture. His own son also has some sheep for 4-H club work.

In 1944, by deeds to and from a "strawman" full title in the farm was placed in the son, reserving a life estate in the widow. No money passed hands. It was done to give the son the farm subject to the life estate which was reserved as something the widow could fall back on if she ever needed to. Farming arrangements have continued as before.

Estate costs reported by the administrator, but advanced by the heirs, are as follows:

Administrator's fee	$75.00
Probate Court fees	3.75
Publication fee	4.80
Registration fee	1.30
O.K. description of real estate	.25
Total	$85.10

There was no inheritance tax to pay.

From inventory:

Appraised value of realty	$7,500.00
Appraised value of personalty	none
Total	$7,500.00

From final account:

Total Receipts	none

Case No. 3

260 acre tract with 2 houses and farm buildings. 104 acres laps over into an adjoining township. Male owner died without a will in 1943 holding full unencumbered title. He left surviving a widow, 2 sons, and a daughter. The younger son had been farming with his father. (Interview obtained with this son and his wife.) He had worked for wages until he was married three years before his father died. He then entered into a joint operation with his father and moved into the tenant house. His older brother was living in the city. The daughter had married and was also living in the city. The deceased had been engaged in considerable off - farm employment and had promised that the younger son would get the farm for staying on the place and also in order that it might pass to an only grandson and stay in the family name.

Along with the 260 they had also been farming an adjoining 60, owned jointly by the deceased and his wife, by the entireties. The younger son was 35 when his father died suddenly without having made a will or otherwise fulfilling his alleged promise. A will was to have been prepared within a few days.

Estate proceedings were opened in 9 days and closed 5 months later. The youngest son was appointed administrator, serving with a $6,000 bond. He continued to operate all 320 acres, he and the widow sharing all income and expenses.

There was a written agreement to this effect. He understood he was to have half of the livestock but his sister and her husband objected to this so he didn't claim any interest therein. He did claim a half interest in some of the farm equipment and in hay and grain on hand. So he included only a half interest in the inventory in his father's estate, apparently without objection.

In closing the estate the widow and younger son together bought out the interests of the other heirs in the farm personalty for $3300, although the other son voluntarily relinquished his right to his half of this amount. At this time 3 children quit claimed their interests in the 260 to the widow and on the same date she changed the property to them, as tenants in common (an undived 1/3 to each) reserving the life use of the property in herself. The widow has continued to live in the house, the younger son in the tenant house, and they have shared the income and expenses, with the son conducting the farming operations.

The widow and son also farm the adjoining 60, which the widow acquired full title to through survivorship rights, and under the same operating arrangements. The widow had in the same manner acquired full title to 70 acres of pasture land nearby. This she has continued to rent out for pasture.

In 1948 the elder son died, leaving his interest in the 260 to his widow under the provisions of his will. There have been no other changes in ownership or operation. The

younger son feels he is too old (43) and farm prices are too inflated to attempt to buy out the 2/3 interest (subject to the widow's life use) held by his sister and his deceased brother's widow. Doesn't know what he'll do. He and his wife feel that he should have received a better deal, especially from his sister and her husband, since he had kept the farm going and had taken care of his parents.

Estate costs reported by the administrator are as follows:

Appraisers fees	$4.00
Probate Court fee	7.25
Publication on claims	4.80
Recording fees	2.30
Register of deeds for O.K. real estate description	.25
Total	$18.60

The administrator requested no fee for himself. No attorney was employed. There was no inheritance tax to pay

From inventory:

Appraised value of realty	$10,000.00
Appraised value of personalty (all is farm personalty)	3,437.50
	$13,437.50

From final account:

Total receipts	$ 6,273.97

Case No. 4

120 acre tract with house and buildings. Female owner died without a will in 1937, holding full title, subject to a mortgage of $2,500 to the Federal Land Bank. She left surviving 2 sons. One son, aged 42, lived on an 80 acre tract nearby and worked in town. The other son was farming the place on her death. She had acquired full title to 70 acres, through survivorship rights, on her husband's death. She had acquired the other 10 acres via quit claim deeds from her deceased husband's other heirs. (Separate interviews obtained with the son who owned the nearby 80, and his wife.)

Estate proceedings were not opened for 2½ years, but were closed in 3 months when finally opened. The farm operating bachelor son continued to live on the place and to farm it. The livestock and equipment stayed with the farm. This son owned all the farm personalty, paid all expenses and kept all the income. The other son had been working in theshops and continued to do so. He later sold the 80 he had been living on and moved to town. He was appointed administrator for the estate on putting up $100 bond. He hired no lawyer and charged no fee. He received some help from the Probate judge. He paid the real estate taxes, estate costs, and debts from money advanced by the heirs, himself and his brother.

The farm continued in undivided ownership between the 2 heirs after the estate was closed. The mortgage had been partially released in 1938 and was discharged in 1942. In 1940 title was placed in joint tenancy, with rights of survivorship, between the 2 sons and the one son's wife. About 1943 the farm operating son left to work in the shops and his brother (and wife) moved onto the place. This brother says this was done because of his health. His wife adds that the brother was in danger of losing the place for all of them for non-payment of taxes. The livestock and equipment stayed on the place. No money changed hands. The son who took over now pays taxes and all expenses and keeps all the income. His wife feels that they have ownership of all livestock and equipment, including that left on the place when they took over. The brother who quit farming, she concedes, may feel that he owns all or at least half of what he had left there. She says its a loose arrangement with no definite agreement. It could give rise to trouble.

Estate costs reported by the administrator, though paid by the heirs, are as follows:

Probate Court fees	$4.25
Publication fees	7.20
Registration fees	1.25
Total	$12.70

There was no inheritance tax to pay.

From inventory:	
Appraised value of realty	$4,000.00
Appraised value of personalty	none
Total	$4,000.00
From final account	
Total receipts:	none

Case No. 5

160 acre tract with house and buildings. Male owner died without a will in 1948 holding full title, subject to a mortgage to a local bank, with a balance due of $3,650. He was unmarried and left surviving as his only heirs at law his divorced parents, the father being a farmer in the neighborhood, and his mo ther in town. His sister's husband (age 32) had been renting the farm on an oral 2/3 - 1/3 crop share basis (on corn, hay, etc.), paying cash rent for pasture. (Interview obtained with this sister) Her husband farmed it along with the 80 acres of his own across the road. The deceased had lived in the house but worked off the place.

Estate proceedings were opened in 5 days and closed 1 year later. (Interviewwas obtained with the administrator and the probate judge involved). Within 7 months however the farm was sold to the sister and her husband (jointly by the entireties) who continued to farm the place along

with the adjoining 80. The petitioner had requested that a member of the family be made administrator but friction between the heirs developed at the hearing, and an administrator from outside the family was appointed -- a person who worked in a local bank. He put up $1,000 bond.

Farming arrangements continued as before. The administrator paid the current real estate taxes and received pasture rent and 1/3 of the crops. The farm was appraised at $10,000, less the balance due on the mortgage. The deceased had a hay baler and other small items of farm personalty inventoried and appraised at less that $200. He also had a combine and some other equipment which the father had already removed claiming he had loaned it to the deceased.

An attorney had been hired to represent the estate. It became necessary to sell the farm to pay debts and expenses of administration. License was obtained to sell the farm, the administrator putting up an additional $10,000 bond. After considerable haggling with the father the administrator sold the farm to the sister and her husband, along with the baled straw and hay, furniture, and odds and ends, for $12,000, the proceeds being used to pay off the mortgage which was not assumed by the purchasers. An administrator's deed was given to them. They in turn, mortgaged the farm to the Federal Land Bank for $10,000, $8,400 of which was needed to purchase it, $1,600 needed for other purposes. The mortgage was amortized, consisting of 59 semiannual payments

of $166, plus 4% interest on the unpaid balance each time. The whole amount is due November, 1978. The sister reported that there was no friction in reaching this settlement, but the administrator requested something above his statutory fees for "unusual services" in selling the farm. The sister thought the administrator's and attorney fees, and other costs of settlement, were too high for the amount of work involved. The probate judge thought otherwise, because of the friction involved. The house had stood vacant for 7 months before the sister and her husband acquired title. Then her husband's brother, who worked for his father on another farm, moved in and still lives there.

Estate costs reported by the administrator are as follows:

Administrator's statutory fees	$307.17
Administrator's fee for unusual services in selling the farm	50.00
Attorney's fees	358.30
Fee for preparing fiduciary income tax return	15.00
Probate Court fees	21.30
Revenue stamps and recording fees	17.40
Administrators bond	10.00
Administrators bond, sale of realty	55.00
(2) Appraiser's fee	30.00
Publication fees	15.00
Publication fees, sale of realty	9.00
Total	$868.17

There was no inheritance nor intangible tax to pay. 27 legal documents were filed.

From inventory:

Appraised value of realty (as though without mortgage)	$10,000.00
Appraised value of personalty (Farm personalty less than $200)	451.00

From final account:

Total receipts (including personalty, proceeds of realty, and farm income)	12,858.46

The administrator's request for $50. additional fees in selling the farm recites that 5 days special service over and above the usual services so rendered was required. No commission was paid to a broker. The administrator interviewed possible purchasers at various times, and performed services in connection with farm operations prior to sale.

Case No. 6

60 acre tract with house and buildings. Female owner died without a will in 1937 holding full and unencumbered title. She left surviving 6 adult children (2 daughters and 4 sons) and 2 grandsons, aged 20 and 21, they being the children of a deceased daughter. All of the heirs lived away, some out of state, except one bachelor son, age 40, who had been living on the farm with his mother. The father had died some time before, holding the property in joint deed with the mother, so that ownership of the farm passed to the mother by right of survivorship on his death. The bachelor son had been farming the place on a 50-50 share basis with his mother. (Interview obtained with this son, and with a neighbor).

Estate proceedings were opened in 4 days and closed 10 months later. The bachelor son continued to farm the place, turning over ½ the farm income to a farmer-neighbor who had been appointed administrator upon the son's request. This administrator put up $500 bond, with an insurance and surety company as his bondsmen. He paid half of the threshing bill and perhaps other expenses. His inventory shows that the deceased owned $181 worth of farm personalty, including farm machinery, chickens, 2 horses, and a half interest in 4 cows and a yearling heifer. This property, except for livestock marketed, stayed with the farm.

About 2 months before the estate was closed all of the other heirs released their interests in the real estate, via quit claim deeds, to the son who was operating it. What little farm personalty was left was also turned over to him. The other children volunteered to do this without consideration, in view of the fact that this son had taken care of the farm and his mother, and that he had paid debts and funeral expenses. The 2 grandchildren, however, insisted on being paid, forcing the son to incure a $700 mortgage. This was paid off and released without apparent difficulty.

The son has continued to farm the place himself. He has never farmed any other land along with it. He has always farmed with horses, and still does. Two years ago the house burned down. He has replaced it with a one room house.

Estate costs reported by the administrator are as follows:

Administrator's fee	$12.00
Administrator's bond	10.00
Publication fees	10.10
Probate fees	2.75
4 Appraiser's fees	4.00
Registration fees	1.25
Total	$40.10

There was no inheritance tax to pay. No attorney was employed.

From inventory:

Appraised value of (farm) real estate	$1,800.
Appraised value of personalty (farm personalty $181)	256.
Total	$2,056.

From final account:

Total receipts (includes the real estate)	$2,206.

Case No. 7

40 acre tract with house and buildings, owned by a widower who died without a will in 1938 holding full title, subject to a $300 mortgage placed on the place the year before, with $300 still due. The deceased left surviving a widow age 78 and 8 adult children. A neighbor across the road (with whom an interview was obtained) had been renting the place, which had consisted of 80 acres until 40 of it was sold to this neighbor in 1937. The 40 in question was there after farmed along with 100 acres then owned by this neighbor. There were no farm buildings on the place at that time. There was an oral 2/3 - 1/3 crop share lease, with the renter paying all expenses. Two sons, who were out of work and had come back to the farm, and a daughter, had been living on the place with the parents. The sons were around 50 years of age.

Estate proceedings were opened within a month and were

closed a year and 3 months later. The neighbor continued to rent the 40 in question on the same arrangements as before, except for one year when the two sons decided to farm the place themselves. They puttered around for this one year, and then rented it out to the neighbor again. The daughter who lived on the place was appointed administratrix. She put up $1,000 bond. The widow requested that she be awarded her widow's allowance, and this was granted without objection. She was awarded $4.00 per week (eventually totalling $110), plus the right to select up to $200 in value from the personal property, which had been appraised at only $74.50 (exclusive of household furniture, ornaments, and wearing apparel, which she was entitled to without any special request). The personalty included a $20 tractor and other small farm items, probably less than $50 of farm personalty.

2 commissioners on claims (who would now be called referees) were appointed to hear, examine and adjust or allow claims against the estate. Their hearings were reopened later at the request of a creditor who claimed he had no knowledge that the estate was being probated. The costs of this later hearing were charged to the creditor.

The deceased also owned a lot in town. The administratrix secured a license from the court to borrow $1200 and mortgage the lot for said amount in order to pay debts and expenses of administration upon certain specified terms.

This required an additional $1,000 bond. The administretrix had spent considerable time and expenses in having this property repaired. She also had the farm building repaired and the farm house wired. Shortly before the estate was closed she secured a license to sell the farm at private sale for the purposes of distribution, this being desired by a majority of the heirs. Her petition was notarized in Arizona. She secured an attorney to appear for her in the matter. An additional $2,000 bond was required. The farm was appraised at $1,750 and was sold outside the family for $1,800. The purchasers (a man and his wife) do not appear to have assumed the mortgage, which was apparently paid by the administratrix. She appears to have wound up in California, where her final account was notarized. Distribution of the approximate shares due the widow and one of the sons was made before the estate was settled, to aid them in moving to the city. This was done without previously securing the consent of the court, as should have been done, but the court condoned the action.

The purchaser rented the 40 out to his brother, who continued to rent it (this was all he farmed) until it was sold 3 years later to another person. The next year it was sold again, to a purchaser who rented it out to the neighbor across the road (he had previously rented it) who farmed it along with his own land again. This purchaser held title jointly, by the entireties with his wife. She survived him and

later sold the place to another person, the present owner, in 1946. The person now lives on the place and farms it himself, though he also works in a factory. Some new buildings have been built on the farm, either by him or one of the prior owners.

Estate costs reported by the administratrix are as follows:

Administratrix fee	$52.50
Administratrix fee, 2½% on sale of farm	45.00
Administratrix fee, 2½% on realty on hand	45.00
2 Administratrix bonds ($10 each)	20.00
Attorney fees, re mortgaging of lot	14.50
Attorney fees, re sale of farm	75.00
(From filed correspondence this fee is shown to be this high because the attorney had to guarantee the administratrix bond, which had not been notorized by the sureties named. It had been notorized in Arizona by the administratrix.)	
Probate Court fees	9.00
Publication fees ($7.20 for sale of farm)	31.52
2 Abstracts ($10.30 for sale of farm)	15.30
Advert. for loan	1.36
Commissioner on claims fees	3.62
Gasoline and other expenses	40.00
Stamps, notary fees, and other expense	16.66
Total	$369.44

There was no inheritance tax to pay. 43 legal documents were filed in the case. Only about 14 are required in a simple case.

From inventory:

Appraised value of lot	$3,000.00
Appraised value of farm ($1,500 less $300 mortgage)	1,200.00
Appraised value of personalty (farm personalty probably under $50)	74.50
Total	$4,274.50
Appraised value of farm for purpose of sale (apparently not less mortgage.)	$1,750.00

From final account:

Total receipts (Includes $1200 received as loan, but not the proceeds from sale of farm.)	$3,404.03

Case No. 8

40 acre tract without buildings. Female owner died without a will in 1943, holding full unencumbered title. She left surviving 4 sons and 2 daughters as her heirs at law. This tract had been owned by her father and was a part of a 216 acre farm, but in 1935 her father died leaving a will providing for the partition of the farm into 6 different tracts - 5 tracts to his 5 children individually

and a sixth to 7 children of a deceased child. The deceased daughter, who had received the 40 in question, had been renting it on crop-shares to two farmers in the neighborhood who farmed it together on some partnership type arrangement between themselves. They also had farms of their own which they farmed along with this.

Estate proceedings were opened in 4 days but not closed until 2 years later. A son living in town was appointed administrator, putting up $200 bond. Meanwhile, the rental arrangements continued. A year and three months later the 6 heirs conveyed their interests to a farmer (and his wife) in compliance with a land contract. This farmer was farming the place across the road (not a part of the orginal 216 acres this 40 used to be part of). This now gave him an operating unit of 320 acres. He has continued to farm this acreage as a unit. Most of the land other than this 40 is owned by his mother - in - law, though his wife has an undivided 1/3 interest in 40 acres (and joint ownership with him in the 40 in question). He and his wife bought the place over a year before the court assigned the residue of the estate to the heirs. They therefore took title subject to the rights of the administrator (on behalf of the estate) until the assignment was made. However, no difficulties appear to have developed.

Estate costs, as reported by the administrator, are as follows:

Attorney fee on land contract	$ 2.00
Advertising for sale of real estate	2.16
Abstract	6.00
Revenue stamps for deed	2.75
Publication on claims	4.80
Appraiser's fees	5.00
Probate Court fees	4.00
Telephone, stamps, etc.	3.08
Total	$31.04

No administrator's fee was charged. There was no inheritance tax to pay. Much expense in selling the 40 was avoided by not requesting for a license from the court to sell. However, the purchaser took a chance by purchasing before the estate was settled. The sale to them never received the sanction of the court.

From inventory:

Appraised value of realty (including a $25 cemetery lot)	$2,725.00
Appraised value of personalty (no farm personalty)	190.00
Total	$2,915.00

From final account:

Total receipts	$ 190.00

Case No. 9

120 acres of swamp land without house or buildings, 40 acres of which lies in an adjoining township. Male owner died in 1940 holding full title subject to a mortgage (with about $500 due) to a commercial bank. He left surviving as his heirs at law a widow, age 53, and 10 children (7 boys) ranging in age from 11 to 33. He, the widow, and 5 children (ages 11 to 21) were living on an 80 acre farm near by (in Orange Township). The rest of the children lived away. An interview was obtained with one of these children, a son who was and is working in the city. The son interviewed thought that his father had been farming both tracts, though the 120 in question had about only 40 tillable acres. The deceased had purchased 40 acres of the 120 (along with an adjoining 38 acres which he later sold) 9 years earlier. He bought it from an estate (in which he held no interest) where a will left everything in trust for an adipted daughter. The 40 in the adjoining township had been purchased a year later from another estate. The remaming 40 had been purchased 3 years later.

Estate proceedings were opened in 22 days but not closed until 10 years and 2 months later. The oldest child, who lived in the city, was appointed administrator at the widow's request. He put up $100 bond. He had written the probate judge indicating that a bonding company was asking $10.00 to

go surety on his bond, and he thought this outrageous. So the judge advised him to get two persons as sureties who could swear they were worth the amount of the bond and get them approved by the Probate judge in his county. This he did.

The 120 acres was appraised at $400. (that is,the deceased's equity in the property).

No personalty was included in the inventory of his property, so the son's notion that his father was farming at the time he died appears somewhat, questionable. More likely the eldest of the sons living at home was doing the farming, with his own equipment. This son is said to have carried on farming operations on both tract's after his father's death. The admimistrator reported the receipt of the proceeds of oats sold in 1940 and reported payment of a combining bill. He reported that there were no crops on the 120 acres in 1941 and that he received only pasture rent in 1942. The place appears to have laid idle ever since.

The administrator obtained license to sell the tract at private sale for the purpose of making distribution. The majority of the heirs had consented to the action. He was required to put up an additional $400 bond for this purpose. But it later became necessary to sell the place to pay debts and expenses of administration. A license was obtained for

this purpose, upon putting up a $550 bond, - the place having been appraised for the third time. It was eventually sold under this latter license, in 1946, to the widow (this ending the undivided ownership after 5½ years). She paid $600 and assumed and paid the $250 remaining due on the mortgage. The administrator had previously paid $250 on the mortgage. He had also paid part of the 1940 taxes and all of the 1941 taxes but the widow was left with $500 in back drainage and general real estate taxes to pay.

The son who was operating the 80 acre home place was not much interested in livestock enterprises. The widow had helped equip the farm and was receiving part of the income. The next youngest son had entered military service. The barn burned down on this place, but a new one was put up. The home place was eventually sold to a third person who has since been farming it himself. A very brief interview was obtained with this purchaser. He was not interested in acquiring the 120 acres in question and says it has laid idle ever since (and was being left idle most of the time while the son was farming the home place). At this time the widow, and the children living with her, moved to the city. The farm personalty on the place was sold at auction, some of it to the one who bought the farm.

The 120 acres was advertised for sale by the widow, but without success. Within the last year, however, she has sold it to the son who had been farming thehome place. He, being

engaged in construction work, has in turn traded it off on some heavy construction equipment. The intentions of the purchaser with respect to the property were not ascertained. The administrator died before filing his final account. The probate judge's correspondence with attorneys for his estate indicated that a successor administrator would need to be appointed to close the estate, but none was ever formally appointed. The widow closed the estate and filed the deceased administrator's final account for him, with the acquiescense of the court. Estate costs, as reported by the widow, are as follows:

Probate fees	$6.75
Appraiser's fees	7.00
Total	$13.75

There must have been publication fees and probably some other expenses not reported. The widow, the deceased son, or the other heirs, must have paid these out of their own funds. There was no inheritance tax to pay. 41 legal documents are included in the estate file.

From inventory:

Appraised value of realty (farm land)	$400
Appraised value of personalty	none
Total	$400

Total receipts: uncertain

Case No. 10

Two separate tracts (and a third separate, 19 acre, tract) all owned by a widower who died without a will in 1938, holding full unencumbered title to all 3 tracts. The deceased also owned a 142 acre tract nearby in another township, holding full and unencumbered title, except that he held nearly a 3/4 interest (his eldest son holding the other 1/4 interest), in 35 1/2 acres of same.

For convenience, the tracts are described as follows:

No. 1 50 acres with house and buildings

No. 2 40 acres without house and buildings

No. 3 19 acres without house and buildings

No. 4 142 acres with house and buildings

The deceased also owned a couple of town lots.

The deceased left surviving 2 married sons, aged 56 and 45, respectively. The deceased had moved to town. The elder son was living on tract 4 and was renting it along with tracts 2 and 3 (201 acres all told) on a 50-50 crop share basis, the deceased had paid the taxes and insurance on buildings. The younger son was living on and farming tract 1, plus some rented land. He was permitted to keep all farm income fron this tract, but paid taxes and insurance. (Interview was obtained with the elder son). The deceased owned no farm personalty, each son owning his own.

Estate proceedings were opened in 8 days and closed 10

months later. During settlement the farming arrangements of the 2 sons continued as before, with the administrator standing in the position of the deceased. The administrator was selected from outside the family, - a person who worked for a savings and loan company. He put up $8,000 bond. In 7 months an agreement was reached whereby the elder son released his interest in tracts 1 and 3, collectively appraised at $3,100, to the younger son in consideration of the latter's releasing his interest in tracts 2 and 4, collectively appraised at $10,400 (considering deceased held only a 3/4 interest in 35 1/2 acres) to the elder son. The elder son gave cash to boot, but he concedes that he was given a little the best of the deal because he had helped support his parents. There appears to have been no friction among the sons in reaching this settlement. The elder son has continued to farm the tracts he thus acquired, together with a 40-acre adjoining tract which he later acquired by deed in 1944. The younger son has continued to farm the tracts he acquired, together with some rented land.

The estate costs reported by the administrator are as follows:

Administrator's fee	$75.00
Probate Court fees	15.00
Publication fees	5.05
Other expenses	79.95
Total	$175.00

An inheritance tax of $258.18 (less $12.91 (5%) for payment within 1 year from death) was paid by the administrator.

From inventory:

Appraised value of realty (Tract 1 $2,500; Tract 2 $400; Tract 3 $600; Interest in tract 4 $10,000; Town lots $2,075)	$15,575.00
Appraised value of personalty (no farm personalty)	10,330.65
Total	$26,905.65

From final account:

Total receipts	$10,438.29

A partial distribution of $500 to each son was permitted by the judge during settlement of the estate on showing that the other assets remaining in the estate were ample to satisfy any outstanding debts and expenses of administration.

Case No. 11

80 acre tract with vacant house and run down buildings. Female owner died without a will in 1947 holding full and unencumbered title, leaving 6 children surviving (2 sons and 4 daughters) ranging in ages from about 52 to 60. She had acquired ownership through survivorship rights on the death of her husband. One son (with whom interview was obtained) had been farming this 80, along with 120 acres of his own. Even at that time, the place had run down buildings and a deserted old house. The son

had an oral 1/3 - 2/3 crop share lease. He was also renting a near-by 83 acre tract in another township, owned by deceased, and a 100 acre farm which she and the eldest daughter held in joint tenancy, with rights of survivorships. He had a couple of sons which he hired to help him farm all this land.

Estate proceedings were opened in 23 days and were closed a little over a year later. (Interview also obtained with the probate judge involved.) There had been some friction in settling up the deceased's husband's estate. Friction developed again when the farm operating son requested his own appointment as administrator. So the judge appointed an administrator from outside of the family--a real estate man with considerable experience in this line of work (who was also interviewed). He put up $5,000 bond. The deceased's farm personl property consisted of a 1/3 interest in growing wheat on the 80 acre tract in question, plus 50 bushels of wheat and 140 of oats. The farm operating son continued to operate as before while the estate was being settled up. The proceedings were delayed somewhat because of objections raised by one of the sisters. The trouble had started when their father died with a will leaving the aforementioned 100 acre farm to the eldest sister and her mother (the deceased) in joint tenancy. This is said to have irked this other sister and the other brother(a farmer in the neighborhood) who had thought she was to get merely a life estate, even though she had taken care of her father for twenty years. So when the eldest sister proposed to buy the 80 in question the other sister

objected that the proposed price was too low, though it was the appraised value of the property, namely $5,000. The administrator obtained a license from the court to sell this tract and the 83 acres in another township at not less than their appraised value at private sale for the purpose of distribution among the heirs. This required an additional $8,000. bond. The objecting sister had an attorney appear at the hearing in this matter (as he had at the hearing on claims) but the license to sell recites that no objections were raised. So the eventual agreement kept the farm in the family and avoided the necessity of advertising it for sale. The farm was sold to the eldest daughter for $5,000, reserving mineral rights, but including growing wheat, and the other tract to the farm operating son for $3,000. This son says he was not interested in getting the 80 which went to his sister.

The farm operating son has continued to farm the 80 in question along with the same other tracts as before carrying on with the same crop-share arrangement on this 80 as before. He and 2 sons own much of the farm machinery together, and change off help. Both sons have land of their own a third son works for his father as a hired man. Each son and the father otherwise keeps income and expense separate.

Estate costs reported by the administrator are as follows:

Administrator's fees	
5% on $1,000	$50.00
2½% on 4,000	100.00
2% on 9,374.89	187.50

Total	$337.50
Administrator's expenses (mileage)	46.20
Appraiser's fees	20.00
2 Abstracts	41.60
Estimated probate court fees	19.65
Advertising farms	3.60
Attorney fees for designated services	29.00
Recording fees	17.45
Publication fees (re-sale of realty $9.00)	24.00
Premium on administrator bond	35.00
Premium on administrator bond-sale of real estate	40.00
Freeholder's fees	3.00
Miscellaneous	3.75
Total	$675.53

There was no inheritance nor intangibles tax to pay. 35 legal documents are included in the estate file. Only about 14 such documents, plus receipts from heirs, are required in a simple case.

From inventory:

Appraised value of realty	$7,550.00
Appraised value of personalty (Farm personalty $796.67)	5,914.80
Total	$13,464.80

From final account:

Total receipts (including proceeds of sale of realty)	$14,374.89

Case No. 12

80 acre tract with house and buildings. Male owner died without a will in 1937 holding full unencumbered title, leaving surviving a widow and 5 children (one daughter) ranging in age from 20 to about 35. The place had been rented out to a top-notch farmer in the neighborhood (interview obtained with this farmer) on a 50-50 crop share basis. It was being farmed along with the farm owned by this neighbor and some other rented land (none adjoining this place), about 300 acres all told. The renter furnished his own tools and equipment, though the deceased had a team of horses, about 6 head of cattle and some odds and ends. The widow and one of the younger sons lived on the place with him. The deceased had acquired full title a little over 2 years before he died, having bought out the other devisees in the settlement of his deceased brother's estate. This brother had died less than 2 years before. The deceased had been given a ½ interest under his brother's will, with 5 nephews and nieces each getting a 1/10 interest.

No estate proceedings have ever been opened, although the widow requested and obtained a Determination of Heirs by the probate court about 5 years later, apparently for the benefit of a third person and his wife, who purchased the farm from the

heirs about that time. The widow was determined by the court to have a 1/3 interest and each of the children a 2/15 interest. The only cost reported was $1.25 for probate court fees. The renter went right on farming the place on the same arrangement as before until it was sold. The small amount of farm personalty owned by the deceased was sold at auction. The new owners rented the place out to various persons until they sold it, over 3 years later, to the present owners, husband and wife, who don't appear to be related to the deceased. The husband has since farmed it himself, though he also has a job off the farm.

The neighbor interviewed thinks the place is in better shape now than before the deceased died. He doubts whether the farm suffered any because of the period of undivided ownership interests caused by his death. However, he thinks the deceased probably could have avoided the sale of the place if he had placed it in joint ownership with his wife. He had talked about doing this, but never did. As it turned out, the widow couldn't get agreement among the heirs and the place was sold. The widow and one of the sons continued to live on the place until it was sold. She has since remarried and moved out of the state. The 4 sons all live in town.

Costs reported in obtaining Determination of Heirs:

Probate Court costs	$1.25

Case No. 13

42 acre tract with house and buildings. Male owner died without a will in 1938 holding full and unencumbered title. He left surviving 2 brothers and a sister as his heirs at law. Interview was obtained with a neighbor and with this sister. The deceased had been living in town. One of his brothers had been living on and farming the place, along with a 25 acre tract nearby that the deceased also owned. The house on this latter place was being rented to someone who worked off the farm. The other brother was living in another state. The sister was living in town. The sister says that the deceased owned all the farmimg equipment, provided supplies, and paid most of the operating expenses. Yet, he allowed the brother who farmed the two places, to keep all the income. She considered the brother a poor farmer.

Estate proceedings were opened in 7 days but not closed until a year and 10 months later. A lawyer was appointed administrator, on putting up $4,400. bond. He became faced with a good deal of friction among the heirs. The brother continued to farm the two farms, except for one pasture which was rented out to someone in the neighborhood. The administrator paid the property taxes and received the pasture rent. He did not report the receipt of any other farm income or payment of any other farm expenses.

The brother out of state came to Ionia County for a time

and prolonged discussions followed. The administrator obtained a license from the probate court to sell both tracts for the purpose of making distribution to the heirs. He accordingly deeded the 25 acre tract to the brother who had been farming it, as a $1,000. advancement on his share of the estate. He obtained a receipt from this brother to this effect. The other 2 heirs had filed their consent to this arrangement. He was then permitted to make a partial distribution of $7,000. each to the other heirs to equal the $1,000. advancement to this brother (the value of the 25 acre tract).

The 42 acre tract was sold to a farmer, who owned and farmed land nearby, for $1500. This occured 3 months after the estate was opened. Most of the farm personalty was also sold to this same purchaser for $100.50, although a wagon was sold to another farmer for $15.00.

The deceased also owned a store in town and an oil station in the country. Both were eventually sold under the license to sell all the real estate, previously obtained. However, the administrator had to obtain permission to sell them for less than their appraised value a lot in town was also sold. The administrator filed 2 annual accounts before filing his final account, and was permitted to make two partial distributions before his final distribution of the estate to the heirs. Each time, he had to show that there would be plenty left in the estate (after such partial distrribution) to pay all outstanding debts and estimated expenses for administration.

The administrator requested $48.18 above his statutory fee because "there has been much disagreement among all heirs, one being in California, for more than a year, and that services rendered have been of a more trying nature than usually required in administration - in constantly trying to reconcile differences through correspondence and otherwise, and the difficulty of selling the --- farm because of its condition, and the numerous court proceedings required."

The purchaser of the 42 acre tract in question has continued to farm it along with 183 acres nearby which he owns. No one has lived in the house and it and the other farm buildings have been allowed to run down. The owner's affinity for taverns is reported to be a contributing factor. Within 6 months from the time he bought the place he deeded it to his housekeeper, who died in 1946 leaving the property by a will to her brother in another state. However, within 5 months he sold it to a real estate man in Ionia County who sold it, in turn (a month later) to the original purchaser who had continued to farm it along with his own 183 acres where he lived all the while.

The brother who acquired the 25 acre tract later sold it and moved to California. An elderly couple now own it and live on the place. A complete history of this tract was not obtained.

Estate costs reported by the administrator are as follows:

Administrator's fees:	
Slatutory fees	$176.82
Additional fee for extrordionary services	48.18
Total	$225.00

2 Annual premiums on Administrator's bond	$ 28.00
Administrator's bonds on sales of realty	87.50
Appraiser's fees	18.50
6 Freeholder's fees	6.60
Probate court fees	12.50
Publication fees	35.45
Attorney fees, charged by the lawyer-administrator	50.00
Registration fees	1.55
Revenue stamps on deeds	7.50
4 advertisements to sell 42 acres	2.82
Abstract to the 42 acres	12.50
Telephone, stamps, etc.	19.04
Total	$507.06

There was no inheritance tax to pay. 63 legal documents are included in the estate file.

From inventory:

Appraised value of realty 42 Acres $1,500 25 Acres $1,000 Other realty $8,000 Total	$10,500.00
Appraised value of personalty ($167.00 in farm personalty)	761.75
Total	$11,261.25

Total Receipts:

Uncertain

Case No. 14

80 acre tract with log house and barn. Male owner died without a will in 1937 holding full unencumbered title. He left surviving 3 cousins as his heirs at law. The deceased lived out of the state and nobody was living in the house. The barn was used solely to store hay and straw. The farm was rented to a farmer-neighbor who farmed it along with an adjoining 150 acres of his own and 60 acres of other rented land - 290 acres all told. (Interview obtained with this neighbor's widow.) The deceased had remarked that none of his heirs seemed to care much for him but that they would all be anxious to get a share of his property when he was gone. He would leave money with the renter with which to pay the taxes.

Estate proceedings were opened in the state where he had resided. In 10 months from his death ancillary estate proceedings were opened in Ionia County, and closed almost a year and a half later. One of his heirs who lived in the city, was appointed ancillary administrator, on putting up $100 bond. As the deceased had no personalty in this county, the farm was the only property involved. Rental arrangements continued as before except that the administrator paid the taxes and received the rent. In one year from the time these estate proceedings were opened the farm was sold under a license from the Probate Court to the renter and his wife (by the entireties) for the appraised value of $2,000. The residue of the estate

was returned to the state of the deceased's residence. Thereafter the place continued to be farmed as before. No one has lived in the old house, nor has any livestock been kept in the old barn. The 60 acres of rented land was later purchased but sold again to a third person who has since farmed it. The purchaser of the tract in question died in 1946 leaving his widow with full title by right of survivorship. Since then the 80 and the 150 have been farmed by a son, and he appears to be an excellent farmer. He has a test plat for a hybrid corn seed company. In 1949 the widow conveyed both tracts to the son, reserving a life estate in herself. She lives in one of the 3 houses on the 150 acre tract, the son's family in one, and a hired man in the other. She and the son share income and operating expenses, she owning half of the machinery but none of the registered cattle (though she once did). She pays taxes, insurance, and other expenses on the realty. She reported that she gets 2/3 of the income.

Estate costs reported by the administrator are as follows:

Administrator's time and expense	$100.00
Attorney fees	115.00
Probate fees	4.00
Publication fees	21.60
Appraisers and commissioners on claim	8.40
Abstract	8.85
Miscellaneous	7.85
Total	$265.70

From inventory:

Appraised value of realty	$2,000.00
Appraised value of personalty	none
Total	$2,000.00

From final account:

Total receipts	$ 216.00

Case No. 15

80 acre tract with house and buildings. Male owner died without a will in 1948, holding full and unencumbered title. He left surviving a widow and two unmarried daughters, age 30 and 36, respectively. (Interview was obtained with the widow). The younger daughter was farming the place with her father at the time of his death. She had a little livestock of her own. The other daughter was also engaged in farmimg operations on a farm nearby, in partnership with another woman.

Estate proceedings were opened in 15 days and closed one year later. The widow became administrator, with a $1000 bond. She purposely didn't request her widow's allowance, ask that dower and homestead rights be assigned, nor enforce her priority rights with respect to personalty. She had urged her husband not to make a will so that all the heirs would get their lawful share. She took her 1/3 interest in the real and personal property, as provided by law. She rented out most of the farm land to two different neighbors to operate along with

their own farmimg units. Each paid half the crop expense and turned over half the crop income on his respective portion. Each has continued on this share basis to the present time (except that one moved away and was replaced by his successor). The deceased's livestock and equipment stayed on the farm. The daughter who had been farmimg with her father carried on the livestock operations as before. There is about the same amount of livestock now as before. Two months after the estate was closed the widow bought out the elder daughter's 1/3 interest in the real estate and farm personalty so that the daughter might use the money to invest in her own farmimg operations. (see next case). Since then the widow has held a 2/3 interest in the realty and in most of the farm personalty, with the farm operating daughter (still unmarried) holding a 1/3 interest in the property in addition to some livestock of her own. The daughter does about all the work in connection with the livestock.

The estate costs were paid by the administratrix from her own funds and no reimbursement was requested. No attorney was employed. There was no inheritance tax to pay. The only costs listed in her final account included:

Publication fees (of which $2.25 was for a want add)	$11.25
Probate Court fees	8.90
Total	$20.15

From inventory:

Appraised value of real estate	$6,500.00
Appraised value of personalty (Farm personalty $1,172.)	1,522.00
Total	$8,022.00

From final account:

Total receipts (includes inventoried personalty, plus income to estate)	$1,522.00

Case No. 16

We are here concerned with 2 separate tracts, of 120 and 40 acres, respectively. The 120 acre tract has 2 houses and a set of buildings, but the 40 acre tract is unimproved. A female owner died without a will in 1937, holding an undivided 2/3 interest in the 40 acre tract and an unusual 1/2 interest, plus dower, in the 120 acre farm. Since her interest in these tracts was acquired through the intestate death, first of a prior owner, then of a co-owner, it will be helpful to get the background.

Her husband died in 1906 owning the 120 acre tract, which he had been farming, and holding full title thereto. He left surviving the female owner in question (age 48) as his widow, and 2 daughters, aged 22 and 13, respectively (an interview was obtained with the younger daughter). The widow was not an

heir of her husband in those days. However, she was given a dower interest in the property. The 2 daughters each got an undivided 1/2 interest, subject to her dower. Neither daughter ever married, ncr did the widow remarry. They proceeded to farm themselves, with the aid of a hired man. The deceased's farm personalty stayed with the farm.

In 1920 the widow and the 2 daughters purchased the 40 acre tract referred to above, as tenants in common, each with an undivided 1/3 interest. They farmed it along with the 120 acre tract. In 1925 they mortgaged the 120 acres for $2,500 to the Federal Land Bank, $81.25 to be payable semiannually for 30 years. Later on, in 1925, the elder daughter died intestate. Her mother inherited her interest in the real and personal property, as her sole heir. This gave the mother an undivided 1/2 interest in the 120 acres, in addition to her dower interest. She now had a 2/3 interest in the 40, having acquired the deceased daughter's 1/3 interest. She now also owned a 2/3 interest in the farm personalty, which stayed with the farm. She and the daughter continued to farm the place with the help of a hired man (different ones from time to time). Then in 1937 the widow died intestate, leaving the daughter, then aged 44, as her sole heir.

Estate proceedings were opened in 16 days and closed a year and 2 months later. The surviving daughter requested and obtained her own appointment as administratrix. She put up a $1,500 bond with a farmer-neighbor as her bondsmen. She continued the farming operations as before, with the aid of the hired man.

Even though she was the only heir, she listed the farm personalty in great detail in her inventory, showing that her mother had held 2/3 interest. The list included farm personalty valued at $1,720.51, including 40 sheep, some lambs, 16 head of dairy and beef cattle, a few sows and pigs, 4 horses, farm machinery, hay and grain, and cash from the sale of farm produce prior to taking the inventory. She also diligently listed in her final account the 2/3 share of farm income received by the estate. She reported that she, as administratrix, paid 2/3 of expenses incurred in harvesting crops, etc., but only 1/2 of the hired labor and board, electricity, fuel, interest, insurance (fire, wind, and hail) and certain other expenses. This appears to have been the way expenses had been previously handled by herself and her mother.

The $2,500 mortgage had $2,213.83 still due when the widow died. So in 12 years only $386 of the principal had been paid off, instead of the approximately $1000 which the mortgage terms called for. Bear in mind, however, that this was from 1925 to 1937, covering the depression years. The daughter had continued to farm the 2 tracts together with the aid of a hired man. Somewhere along the line a "tenant" house has been built for him to live in. She has continued to live in the other house. She has taught school part of the time in addition to looking after the farm. About 1939 the unmarried daughter (who is now 39) of a neighbor bought into the business and they have been farming the 2 tracts in partnership (with the help of a hired man)

ever since. The woman who farms with her also lives with her most of the time. She succeeded in paying off the mortgage and obtaining its discharge in 1942, 3 years ahead of schedule. In 1948 her partner was able to invest more capital in the business, funds which she obtained when she sold out her share of her deceased father's estate to his other heirs. He had died intestate a few months earlier (See previous case).

Estate costs reported by the administratrix are as follows:

Publication on claims	$4.80
Probate fees	2.25
Recording assignments of residue	1.00
Total	$8.05

No administrator's fee was charged, no attorney was employed, and there was no inheritance tax to pay.

From inventory:

(Inventory of real estate as actually reported, is in error, since it shows the full value thereof)	
Appraised value of deceased's interest in real estate, less ½ of mortgage (as shown in final account)	$2,559.75
Appraised value of 2/3 interest in personalty (all farm personalty, except $125 household goods)	1,845.51
Total	$4,405.26

From final account:

Total receipts (includes $621.54 gain in personalty over inventory value)	$2,467.05

Case No. 17

80 acre tract with no house or barn. A garage type structure serves both as a dwelling and for other purposes. 2 owners holding undivided 1/4 interests have died without a will since 1935 (one in 1936 and the other in 1942). The story really began, however, in 1907. At that time this farm was owned in the entirety by a male owner who died leaving a will which provided that the property should go to the widow until the 3 sons or the survivors reached 21, then, if she survive until then, to her and the surviving sons, share and share alike. All 4 survived, and each was therefore entitled to an undivided 1/4 interest. The 3 sons were all under the age of 7 in 1907. The father had been farming the place, along with an 80 acre tract (not adjoining) in an adjoining township. There was a good house and set of buildings on the place in question at that time, according to a neighbor and his wife (with whom an interview was obtained.)

Both tracts were apparently rented out until the sons became old enough to farm. Then 2 of the boys farmed both 80's with the help and guidance of the widow. All 3 shared income and expenses. The other son worked at home awhile but later went off to the city, where he died in 1936, without a will.

He left a widow and 4 minor children (one a son) as heirs of his undivided 1/4 interest. He does not appear to have had an interest in the farm personalty. No estate proceedings were opened, but in 1943, 6½ years later, his widow petitioned the probate court to make a Determination of Heirs. The court determined that his widow held a 1/3 interest and his children each a 1/6 share in his 1/4 interest. The number of owners holding fractional interests in the property had now increased from 4 to 8, with their respective interests ranging from 1/24 to 1/4.

Meanwhile the widow of the orginal owner died in 1942, also without a will, leaving the 2 surviving sons and the 4 children of the deceased son as heirs of her 1/4 interest. This therefore decreased the number of undivided ownership interests by one (from 8 to 7) and effected an increase in the shares of all surviving owners, except that of the deceased son's widow. The range in undivided ownership interests in the farm had become 1/24 to 1/4 at the time the son died, but now had become 1/16 to 1/3 on the widow's death.

Estate proceedings were opened in a little over a month but were not closed until a year and 3 months later. The township supervisor, who was also a farmer in the neighborhood, was appointed administrator. He put up $500 bond. The deceased son's widow was appointed guardian to represent her 4 minor children, who were among the heirs. At the time of her death the widow owned a third interest in a good deal of the livestock, in grain in the field, and in hay and straw in stacks on both 80's. The two sons held the other 2/3 interest. She also owned 27 chickens

and 14 hens. These were marketed and part of the grain was sold to a third party. Her 1/3 interest in the rest of the farm personalty was sold to the 2 sons and remained on the place. The sons agreed to purchase that part of the deceased widow's interest in both parcels of real estate which was held by the other heirs. License was secured to sell her interest and it was sold to them for $1,100. The administrator had put up an additional $1,000 bond for this purpose. Before this sale was completed, however, the administrator died. Another farmer in the neighborhood was appointed successor administrator. He had put up $1,100. bond, in addition to his regular $500 bond, before being authorized to close the sale. About 6 months after the widow's death her interest was deeded by the administrator to the 2 sons. This didn't decrease the number of undivided interests but it reshuffled the shares of the owners, now ranging form 1/24 to 9/24. Before the estate was closed 2 other conveyances placed full title in the 2 sons, as follows: 1. About 4 months later, the widow of the deceased son acted as guardian to convey the remaining interests of his 4 minor children to the bachelor sons, via a guardian's deed. 2. Within about another 4 months the only other outstanding interest, the widow's own interest, was conveyed by her to the 2 sons. The sons were then 40 and 38 years old, respectively. At the same time that the sons completely bought out the other undivided ownership interests (in both 80's) they mortgaged both tracts to an uncle for $2,800, payable $200 a year

with 5% interest, the balance due in 8 years. This mortgage was replaced by a $2,400 mortgage on the same terms, in 1947 (4 years later) and this in turn was replaced by a $2,800 mortgage, also on the same terms, the next year. The latter mortgage has not yet been released. At least up until 1948, therefore, little or no progress had been made in reducing the mortgage.

Both the house and the barn had burned down at different times since their father died. Neither had been replaced, except for a garage-type structure which has been built, and in which the 2 sons live. They were not found at home (in 2 tries) and the neighbors interviewed report that they frequently aren't home. An affinity for taverns was said to have something to do with this. This is mentioned only to show that the inheritance process may be only a partial reason for the situation found to exist. Some livestock is kept on the place, but with inadequate facilities. The neighbors observed that inheritance, "getting something for nothing," has led others in the neighborhood to squander their inheritance by drinking it up or otherwise, and to let the farm run down, - especially the buildings.

Estate costs in the widow's estate, as reported in final accounts filed by the deceased administrator's own administrator and the successor administrator are as follows:

Original Administrator's fees	$ 25.00
Successor Administrator's fees	30.00
Attorney fees and expenses	114.70
Publication fees	33.00
Probate court fees	7.75
2 Abstracts	25.25
Appraiser's fees	8.00
O.K. of description, real estate	.50
Recording fees	2.00
Total	$246.20

There was no inheritance tax to pay. 37 legal documents are included in the estate file.

Case No. 18

This is in one respect a unique case, as we shall see. The tract in question consists of 76 acres, with an abandoned house and no buildings. It was in this condition in 1927 when the male owner died leaving a widow, son and daughter surviving. An interview was obtained with the son. The son was about 35 and the daughter about 38. The deceased held full and unencumbered title. He and his wife had been living with the son and his wife on an adjoining farm. The son farmed this tract along with the place where they lived, 255 acres all told. This 255 acres consisted of 3 other tracts besides the one in question. There was a 40 owned outright by the son, a 60 owned by the son

subject to a life estate in his parents, and 79 acres which the parents had owned together by the entireties, so that the widow had acquired full title by rights of survivorship on her husband's death.

Estate proceedings were not opened until the death of the widow in 1941, 13½ years later. She and the son and his wife had been living together. Both of the parents had left a will but, strangely enough, neither will was ever presented to probate. The son explained that each will covered property not actually owned by the respective parents at the time of their death so there was no point in probating them. They were however, placed in the folder which holds the estate files. A reexamination of these wills disclosed that, while the sons contention was true with respect to his mother's will, the father had provided simply that all his property, real or personal, should go to the 2 children, subject, however, to a life estate in the widow. This would mean any real estate he might own on his death, for no specific property was mentioned.

At any rate, the son had continued to farm the 255 acres, including the tract in question. He opened both estates within a month after the death of the widow and both were closed 6 months later. He was appointed administrator in both estates, on putting up $25 bond in each.

In each estate he reported that there was no personal property to dispose of. Any outstanding debts and all estate

costs were paid by the son and daughter, the heirs. On the day that the estates were closed they deeded the 79 acres which they inherited from the mother on her death to a"straw" party and this party deeded it back to the son and his wife as tenants by the entireties, with right of survivorship. They got a banker to help them carry this out. The son gave a $3,500. mortgage to his sister and her husband in buying out her interest. However, this mortgage was not placed on the tract in question, but on the 79 acres. He also gave her a note for $1,500. She had held a ½ interest in the two tracts, which had been collectively appraised at $7,500. So the two tracts were thus consolidated in one owner, the son, along with the 40 he already owned and the 60 he had held subject to a life estate in his mother - that is, the entire operating unit.

The mortgage was to be fully paid in 5 years. Actually it was paid off and released in less than 4 years. Its terms included $100. annual payments on principal plus 5% interest. The son and his wife (the mortgagors) were to pay taxes and insurance. Reported estate costs, which were paid by the heirs, consist of:

Publication fees	$4.80
Recording fees	1.30
Probate fees	3.50
Total	$9.60

As reported, costs were identical in each estate. The son said that the total actual costs in both estates was $23.00. There was no inheritance tax to pay. There were no receipts by the administrator nor any personalty reported in either estate. The appraised value of real estate in the father's estate was $2,500. (the 76 acres in question) and in the widow's estate, $4,000. (the 79 acres in which full title was acquired by survivorship rights).

APPENDIX II. LIST OF LEGAL CITATIONS FOR PART I.

Note: The numerous references to "M.S.A." refer to Michigan Statutes, Annotated.

1. See McAvinchey, F.L. Michigan Probate Practice (1943) sec. 144, et. seq.
2. 1 Univ. of Detroit Law Journal 206 (1932)
3. McAvinchey, op. cit., sec. 144, et. seq.
4. Montgomery V. Trombley, 276 Mich. 439, 267 N.W. 648 (1936)
5. See M.S.A. sec. 27. 3178 (381), Historical note.
6. In re Thompson's Estate, 241 Mich. 583, 217 N.W. 889 (1928)
7. M.S.A. supp. 1949 sec. 26. 216 (1) et. seq.
8. Moore, A. E. Michigan Probate Law and Practice, supp. 1948 sec. 1483.1, et. seq.
9. Estate of Loakes, 320 Mich. 674 (1948)
10. M.S.A. sec. 27. 3178 (123)
11. M.S.A. sec. 27. 3178 (123)
12. M.S.A. supp. 1949. sec. 27. 3178 (163)
13. M.S.A. sec. 27. 3178 (150) and M.S.A. supp. 1949, sec. 27. 3178 (163)
14. M.S.A. sec. 2. 212
15. Op. Atty. Gen. 1913, p. 350.
16. M.S.A. sec. 27. 3178 (155)
17. Rowley v. Stray, 32 Mich. 70 (1875)
18. M.S.A. sec. 27. 3178 (154)
19. Van Cleve v. Van Fossen, et. al., 72 Mich. 342 (1889)
20. M.S.A. sec. 27. 3178 (154)

21. Van Cleve v. Van Fossen et. al., 72 Mich. 342 (1889)

22. Based largely upon The Descent and Distribution of Property, Booklet, 54 pp., The Michigan Trust Co., Grand Rapids, 1949.

23. Based largely upon Moore, A. E. Michigan Probate Law and Practice (1946) sec. 1023.

24. M.S.A. 27. 3178 (154)

25. Lyon v. Crego, 187 Mich. 625 (1915)

26. Moritz V. Wayne Circuit Judge, 291 Mich. 190 (1939); Op. Atty. Gen. 1925-26, p. 140.

27. M.S.A. supp. 1949, sec. 27. 3178 (549)

28. IBid, secs. 27. 3178 (164 and 549); Shinkanis v. Johnstone, 312 Mich. 199 (1945)

29. M.S.A. sec. 27. 3178 (156)

30. M.S.A. sec. 27. 3178 (164) Moritz v. Wayne Circuit Judge, 291 Mich. 190 (1939)

31. M.S.A. sec. 27. 3178 (151)

32. M.S.A. sec. 27. 3178 (152)

33. M.S.A. sec. 27. 3178 (153)

34. In re Estate of Kuch, 311 Mich. 158 (1945)

35. Garwols v. Bankers Trust Co., 251 Mich. 420

36. M.S.A. sec. 26. 1131

37. M.S.A. sec. 27. 3178 (621)

38. 26 C. J. S. sec. 64.

39. Burns v. Berry, 42 Mich. 176 (1879); Pehlow v. Artic Iron Co. 164 Mich. 87 (1910)

40. M.S.A. sec. 26. 231

41. Cunnings v. Schreur, 239 Mich. 178; Oades v. Standard Savings and Loan Assn. 257 Mich 409.

42. Tuller v. Detroit Trust, 259 Mich. 670, 244 N.W. 197 (1932)

43. Burral v. Bender, 61 Mich. 608, 28 N.W. 731

44. Oades v. Sandwich Shoppe Co., 257 Mich. 469, 241 N.W. 262 (1932)

45. M.S.A. sec. 26. 223, et. seq.

46. M.S.A. sec. 26. 273, and 26..274.

47. M.S.A. sec. 26. 230 et. seq.

48. M.S.A. supp 1949, Const, Art. XIV, sec. 2; M.S.A. Const. Art. XIV sec. 3 and 4; Tharp v. Allen, 46 Mich. 389.

49. See McAvinchey, op. cit. sec. 123, and M.S.A. supp 1949, Const. Art XIV sec. 2.

50. First Nat. Bank of Buchanan v. Twombly, 265 Mich. 555; M.S.A. sec. 26. 237.

51. M.S.A. supp. 1949, sec. 27. 3178 (138)

52. Ibid.

53. Ibid.

54. Sequist v. Fabiano, 274 Mich. 643, 265 N.W. 488 (1936); Wood Hydraulic Hoist and Body Co. v. Norton, 269 Mich. 341, 257 N. W. 836 (1934).

55. Wood Hydraulic Hoist and Body Co. v. Norton, 269 Mich. 341, 257 N.W. 836 (1934)

56. In re Hepimstall's Estate, 323 Mich. 322 (1948)

57. See M.S.A. sec. 27. 3178 (19) and sec. 27. 3178 (120)

58. This listing is based largely upon Moore, A. E. Michigan Probate Law and Practice, sec. 2480.

59. M.S.A. sec. 27. 3178 (286)

60. M.S.A. sec. 27. 3178 (121)

61. Ibid.

62. M.S.A. sec. 27. 3178 (122)

63. M.S.A. sec. 27. 3178 (251 and 278)

64. In re Estate of Morgan, 209 Mich. 65 (1920)

65. In re Estate of Abramovitz, Appeal of Katie Abramovitz, 278 Mich. 271 (1936)

66. Estate of Sprague, 125 Mich. 357 (1900) (construing a former but similar statutory provision.

67. M.S.A. sec. 27. 3178 (255)

68. M.S.A. sec. 27. 3178 (252)

69. M.S.A. sec. 27. 3178 (286)

70. M.S.A. sec. 27. 3178 (253)

71. M.S.A. sec. 27. 3178 (255)

72. M.S.A. sec. 27. 3178 (258)

73. M.S.A. sec. 27. 3178 (279)

74. M.S.A. sec. 27. 3178 (125)

75. M.S.A. sec. 27. 3178 (130 and 131)

76. M.S.A. sec. 27 3178 (381) supp. 1949

77. M.S.A. sec. 27. 3178 (382)

78. M.S.A. sec. 27. 3178 (385, et. seq.)

79. M.S.A. sec. 7. 570 (2)

80. M.S.A. supp. 1949, sec. 27. 3178 (412)

81. M.S.A. supp. 1949, sec. 27. 3178 (413)

82. M.S.A. sec. 27. 3178 (420)

83. M.S.A. sec. 27. 3178 (428)

84. M.S.A. sec. 27. 3178 (140 et. seq.)

85. M.S.A. supp. 1949 sec. 27. 3178 (138)

86. M.S.A. supp. 1949 sec. 27. 3178 (165) and M.S.A. sec. 27. 3178 (420)

87. M.S.A. sec. 27. 3178 (123)

88. M.S.A. secs. 27. 3178 (150, 381 and 465); Casper v. Ralph 323 Mich. 173 (1948); Op. Atty. Gen., Dec. 13, 1939.

89. In re Estate of Saier, 158 Mich. 170 (1909)

90. M.S.A. sec. 27. 3178 (293)

91. M.S.A. sec 27. 3178 (381)

92. In re Estate of Winter, 297 Mich. 294 (1941)

93. Lang v. Landmen, 118 Mich. 174

94. M.S.A. sec. 27. 3178 (124)

95. M.S.A. sec. 26. 228

96. M.S.A. supp, 1949, sec. 27. 3178 (138)

97. M.S.A. sec. 27. 3178 (462)

98. M.S.A. sec. 27. 3178 (471)

99. M.S.A. sec. 27. 3178 (472)

100. M.S.A. sec. 27. 3178 (473)

101. M.S.A. sec. 27. 3178 (142 et. seq.)

102. Showers v. Robinson, 43 Mich. 502

103. M.S.A. sec. 27. 3178 (479)

104. M.S.A. sec. 27. 3178 (519 et. seq.)

105. M.S.A. sec 27. 3178 (475)

106. M.S.A. sec. 27. 3178 (477)

107. M.S.A. sec 27. 3178 (478)

108. M.S.A. sec. 27. 3178 (480)

109. M.S.A. sec. 27. 3178 (487)

110. Smith v. Withey, 309 Mich. 364

111. M.S.A. sec. 27. 3178 (501)

112. M.S.A sec. 27. 3178 (488)

113. M.S.A. sec. 27. 3178 (485)

114. M.S.A. sec. 27. 3178 (489)

115. M.S.A. sec. 27. 3178 (495)

116. M.S.A. sec. 27. 3178 (496)

117. Windoes v. Colwell, 247 Mich. 372 (1929)

118. In re Estate of Norton, 169 Mich. 531 (1912)

119. M.S.A. sec. 27. 3178 (504 et. seq.)

120. M.S.A. sec. 27. 3178 (150 and 253)

121. M.S.A. supp. 1949, sec. 27. 3178 (163)

122. M.S.A. sec. 27. 3178 (461)

123. M.S.A. sec. 27. 3178 (504)

124. M.S.A. sec. 27. 3178 (288), referring to M.S.A. supp. 1949, sec. 26. 85

125. Roberts v. Michigan Trust Co., 273 Mich. 91 (1935)

126. M.S.A. sec. 27. 3178 (643, et. seq.)

127. M.S.A. supp. 1949, sec. 27. 3178 (290)

128. M.S.A. supp 1949, sec. 27. 3178 (138)

129. Ibidc sec.27 3178 (165)

130. M.S.A. sec. 27. 3178 (168 and 169)

131. Calhoun v. Crocknell, 202 Mich. 430

132. M.S.A supp. 1949, sec. 27. 3178 (307)

133. Ibid, sec. 27. 3178 (302)

134. Ibid, sec. 27. 3178 (448, et. seq.)

135. M.S.A. sec. 27. 3178 (36)

136. In re Estate of Meredith, 275 Mich. 278 (1936)

137. M.S.A. sec. 27. 3178 (145, et. seq.)

138. M.S.A. sec. 27. 3178 (430)

139. M.S.A. supp 1949, sec. 27. 3178 (284)

140. M.S.A. sec. 27. 3178 (285)

141. M.S.A. sec. 27. 3178 (17)

142. M.S.A. supp 1949, sec. 27. 2562 and M.S.A. sec. 2565

143. M.S.A. supp. 1949, sec. 27 3178 (382)

144. Ibid, sec. 27. 2557

145. M.S.A. 27. 3178 (414 et. seq.)

146. M.S.A. sec. 7. 561, et. seq.; Op. Atty. Gen. 1923-24 p. 228.

147. In re Fish's Estate, 219 Mich; 369, 189 N.W. 177 (1922) In re Fox's Estate, 159 Mich. 420 (1909)

148. See United States Code (1946 Ed., including supplements) Title 26, sec. 800, et. seq.

149. M.S.A. sec. 7. 556 (1) et. seq.

150. M.S.A. sec. 27 2118 Trenton v. Miller, 94 Mich. 204, 53 N.W. 957, (960 (1892)

151. Nott v. Gundick, 212 Mich. 223, 180 N. W. 376 (1920)

152. M.S.A. sec. 26. 1108; Des Roches v. McCrary, 315 Mich. 611, 24 N.W. 2d 511 (1946); Zwergel v. Zwergel, 224 Mich. 31 (1923); Trenton v. Miller, 94 Mich. 204, 53 N.W. 957 (1892); Sullivan v. Sullivan, 300 Mich. 640 2N.W. 2d. 799 (1942)

153. Thompson on Real Property (Perman. Ed.) sec. 1908

154. Gay v. Berkey, 137 Mich. 658, 100 N.W. 920 (1904)

155. Tiffany H. T., The Law of Real Property, 3rd Ed, sec. 461

156. Victoria Copper Mining Co. v. Rich, 193 Fed. 314 (1911); Dubois v. Campau, 24 Mich. 360 (1872)

157. M.S.A. secs. 7.6. and 7. 97

158. M.S.A. sec. 7. 115

159. Taylor v. S. S. Kresge Co., 326 Mich. 580, 588 (1950)

160. M.S.A. sec. 27. 2012; Jarvis v. Jarvis, 288 Mich. 608 286 N.W. 96 (1939)

161. Frenzel v. Hayes, 242 Mich. 631 (1928)

162. Trenton v. Miller, 116 Mich. 45, 74 N.W. 443 (1881)

163. Moreland v. Strong, 115 Mich. 211, 73 N.W. 140 (1897)

164. Tharp v. Allen, 46 Mich. 389, 9 N.W. 443 (1881)

165. M.S.A. sec. 27. 2143, Neisbaum v. Shapero, 249 Mich. 252, 228 N.W. 785 (1930)

166. M.S.A. sec. 27. 2145; Hennes v. Hebard and Sons, 169 Mich. 670, 135 N.W. 1073 (1912); Benedict v. Torrent 83 Mich. 181, 47 N.W. 129 (1890)

167. M.S.A. sec. 27. 2144

168. Benedict v. Torrent, 83 Mich. 181, 47 N.W. 129.

169. Campbell v. Homer Ore Co, 309 Mich. 693, 16 N.W. 2d. 125

170. McArther v. Durnaw, 328 Mich. 453, 43 M.W. 2d. 924 (1950)

171. Lee v. Livingston, 143 Mich. 203, 106 N.W. 713

172. M.S.A. secs 27. 2145, et. seq; and 26. 258

173. Rea v. Rea, 63 Mich. 257, 268

174. In re Thompson's Estate, 241 Mich. 583, 217 N.W. 889 (1928)

175. Hodges v. Phinney, 106 Mich. 537, 64 N.W. 477 (1895)

176. Pool v. Union Trust Co., 191 Mich. 162, 157 N.W. 430 (1916)

177. M.S.A. sec. 26. 228; Barriss v. Emmons, 173 Mich. 590 (1913)

178. In re Estate of Goff, 123 Mich. 456 (1900); Zoellmer v. Zoellmer, 53 Mich. 620 (1913)

179. Fox v. Greene, 289 Mich. 179

APPENDIX III. A RECENT STATUTORY AMENDMENT

Since the completion of the library research upon which Part I of this manuscript is based, the Michigan Legislature, in its regular 1951 session, passed an amendment to the statute relating to the distribution of the personal property of a deceased person who dies intestate. This amendment was approved by the Governor but will not become effective until September 29, 1951. It will change the law in certain relatively minor particulars. To comply with this ammendment, the listing of 12 more or less common situations described herein on pages 16 to 20, inc., would need to be altered as follows:

1. In situation no. 6, with respect to the disposition of personalty, the words " issue of deceased brothers and sisters" would read " children of deceased brothers and sisters", and the disposition of a deceased woman's personalty would not be the same as the disposition of her real estate, but would go ½ to her spouse and ½ equally to brothers and sisters and children (instead of issue) of deceased brothers and sisters, etc.

2. The description of situation no. 7 would have to read " spouse (but no parents, brother, or sister, nor children (instead of issue) of deceased brothers and sisters" in order for the stated disposition of personalty to be correct. (Senate Bill No. 163)