

December 2019

## Liability of Chiropractors for Malpractice

Jerald E. Dukes

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

---

### Recommended Citation

Jerald E. Dukes, *Liability of Chiropractors for Malpractice*, 10 Wyo. L.J. 124 (1956)  
Available at: <https://scholarship.law.uwyo.edu/wlj/vol10/iss2/4>

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

in their agreements with the mortgagor of premises as against a prior mortgagor so long as removal does not do substantial damage to the premises. And parties to a sale and mortgage may agree to make whatever personality is included in the mortgage real property for the purpose of the mortgage.

MYRON HOWARD

---

### LIABILITY OF CHIROPRACTORS FOR MALPRACTICE

Since the days of Hippocrates, there has been a constant struggle between the "regular" and "non-regular" medical practitioners. The rivalry which exists today between regular physicians and surgeons and the osteopath, the chiropractor, the naturopath, the Christian Science healer, the clairvoyant physician, and those of various other schools of healing is but a repetition of the rivalry between the allopath and the homeopath, the physio-medic, the eclectic, and the botanic physicians of 175 years ago.<sup>1</sup> Since the founding of the American School of Osteopathy by Dr. A. T. Still in Kansas in 1872 and the school of chiropractic by D. D. Palmer in Iowa in 1894 these two healing schools have steadily intruded themselves into the field of medicine.<sup>2</sup> Many legislatures have felt that such schools have a place in the modern art of healing, and now every state in the Union and the District of Columbia provide for the licensing of osteopaths, and all except Louisiana, Mississippi, New York, Massachusetts and Texas provide for the licensing of chiropractors as such.<sup>3</sup>

This article will be limited to a discussion of the liability of chiropractors in malpractice actions for failures in the diagnosis or treatment of serious disorders such as diphtheria, diabetes, heart conditions and fractures, and also cases of alleged malpractice in the treatment of sore backs, dislocated vertebrae and similar disorders which are usually considered by the public as within the field of chiropractic practice. The article will be directed mainly to the standard of care of the chiropractor but will include some other aspects of the broader question of liability for malpractice. The liability of members of other schools of drugless healing will be only incidentally considered. The question of the liability of a chiropractor acting as an operator of an X-ray machine presents special problems and will not be discussed.

1. In Fishbein, *The New Medical Follies* (1927), there is listed in Chapter I, *An Encyclopedia of Cults and Quackeries*, an alphabetical list of cults numbering sixty-three, from "aerotherapy" to "zodiac therapy." Since the publication of that book numerous other cults have appeared. See also, Caldwell, *Early Legislation Regulating the Practice of Medicine*, 18 Ill. L. Rev. 225 (1923).
2. In Reed, *The Healing Cults* (A. M. A. pamphlet, 1932) it is stated that the A. M. A. Committee on the Costs of Medical Care estimated that as of 1932, in the United States as a whole, for every ten physicians there was one chiropractor. Wyoming had one chiropractor for every two physicians, for the highest ratio; and Wyoming was second only to California in the ratio of chiropractors to population. In Boyd, *The Cult of Chiropractic* (1953), published by the Louisiana State Medical Society, it is estimated that in 1952 there were 20,000 chiropractors in the United States.
3. Memorandum, Bureau of Legal Medicine and Legislation, American Medical Association (1950).

Before considering any cases or rules pertaining to chiropractic, it is necessary to attempt to define the term itself. A Utah court has given the following definition: Chiropractic is the system of therapeutic treatment of various diseases, through adjusting of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension on nerve filaments by operations performed with the hands, and without administration of drugs; a system of manipulation which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation.<sup>4</sup> The Wyoming statute has a similar definition as follows: "Chiropractic is a method of palpation, nerve tracing and adjustment of vertebrae and other tissue for relief of morbid conditions. 'Chiropractic' is the science that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and teaches the act of restoring anatomic relation by process of adjusting."<sup>5</sup> In other words, the chiropractic theory is that all diseases and illnesses are due to one cause—slight dislocation of one or more of the spinal vertebrae. When such "subluxations" occur, the theory runs, the apertures between the vertebrae through which the nerve branches issue from the spinal cord are narrowed and there is pressure upon the nerve or nerves in question. Such pressure prevents the nerve from doing its work properly, and disease then results in the organ or part which the nerve activates. Following this theory, fundamentalist chiropractors believe that no necessity exists for making a medical diagnosis since all diseases are caused by dislocated vertebrae. Confronted with a sick person, the chiropractor has only to discover by palpation or nerve tracing (tracing of subcutaneous nerves by means of tender spots), the vertebrae which are out of position. These he "adjusts" and when he has returned them to the normal position, the cure will follow automatically.

Many principles of law which govern the relation of a regular medical practitioner to his patient also apply to the chiropractor.<sup>6</sup> He is bound to exercise the reasonable skill and care possessed and exercised by other practitioners, generally of his own school, in the same community or area.<sup>7</sup> The chiropractor is not an insurer, nor does he warrant favorable results in the absence of a special contract.<sup>8</sup> The mere failure to effect a cure does not raise a presumption of a want of proper care, skill and diligence.<sup>9</sup> In order to enable the patient to recover against the chiropractor for malpractice, the negligence of such practitioner must have been the proximate cause of

---

4. Walkenhorst v. Kesler, 92 Utah 312, 67 P.2d 654 (1937).

5. Wyo. Comp. Stat. § 37-704 (1945). But see Boyd, *The Cult of Chiropractic* (1953): "It is impossible to define chiropractic accurately because it has no fixed meaning. It is not a name given to a definite method of diagnosis and treatment. In the different states in which chiropractic is licensed the definition of what they can do and what they are supposed to do mean different things."

6. Treptau v. Behrens Spa, 247 Wis. 438, 20 N.W.2d 108, 19 N.C.C.A. N.S. 1 (1945).

7. Janssen v. Mulder, 232 Mich. 183, 205 N.W. 159, 25 N.C.C.A. 248 (1925); Howe v. McCoy, 113 Cal.App. 468, 298 Pac. 530 (1931).

8. Abos v. Martyn, 31 Cal.App.2d 705, 88 P.2d 797 (1939).

9. Walkenhorst v. Kesler, 92 Utah 312, 67 P.2d 654 (1937).

the patient's injury.<sup>10</sup> A mere error in judgment does not render a chiropractor liable in a malpractice action.<sup>11</sup> A patient may be barred from recovery for the negligence of a chiropractor under the doctrine of contributory negligence.<sup>12</sup>

The basic rule governing the liability of chiropractors is that drugless healers are entitled to be judged according to the standards of the school of healing which they profess to follow. However, apart from such rules as apply alike to regular medical practitioners and chiropractors, the law concerning the liability of the latter is in a somewhat confusing state. The variance of rules in different jurisdictions as to the standard of care of the chiropractor seems partly due to differences in the licensing statutes,<sup>13</sup> and also due in part to refusals by some courts to follow the general rule that the drugless healer is entitled to be tested by the rules and principles of the school to which he belongs.

Recognition of the liability of a chiropractor for a failure to exercise the requisite skill in *treatment* of the patient's disorders has been accorded in a large number of cases. The law on this subject is not as confusing as in the cases where liability is sought to be predicated under negligence in *diagnosis*; apparently the "school of healing" standard does not pose such a problem in cases involving negligent treatment. Thus, a chiropractor has been held liable for negligence in applying a cast to a fracture,<sup>14</sup> for manipulating the spine of a patient with high blood pressure who died from a cerebral hemorrhage,<sup>15</sup> for negligence in diathermy treatment resulting in burns,<sup>16</sup> and in treatment by surgery of a patient with hemorrhoids.<sup>17</sup> The last-mentioned decision was based on the generally accepted rule that when

- 
10. *Willett v. Rowekamp*, 134 Ohio St. 285, 16 N.E.2d 457 (1938). The evidence as to causation was held to be sufficient in *Brown v. Shyne*, 242 N.Y. 176, 151 N.E. 197, 44 A.L.R. 1407, 25 N.C.C.A. 227 (1926) where the plaintiff gave testimony, although contradicted by other witnesses, that the paralysis from which she suffered was produced by the chiropractic treatments.
  11. *Chesney v. People*, 121 Colo. 73, 212 P.2d 1011 (1949), noted, 22 Rocky Mtn. L. Rev. 212 (1950).
  12. *Mims v. Ragland*, 59 Ga.App. 703, 2 S.E.2d 174 (1939). But see *Kelly v. Carroll*, 36 Wash.2d 482, 219 P.2d 79, 19 A.L.R.2d 1174 (1950), cert. denied, 340 U.S. 892 (1950), holding that the patient was not guilty of contributory negligence; the court being of the opinion that it would require an unusual state of facts to render a person possessed of no medical skill guilty of contributory negligence because he accepted the word of his drugless healer and trusted in the efficacy of the treatment prescribed by him.
  13. Note, 22 Rocky Mtn. L. Rev. 212 (1950).
  14. *Wallace v. La Vine*, 36 Cal.App.2d 450, 97 P.2d 879 (1940).
  15. *Deward v. Whitney*, 298 Mass. 41, 9 N.E.2d 369 (1937). Defendant admitted that his school advocated refusal to "take on patients with that ailment (high blood pressure) because it was too dangerous." But note that this case apparently follows the Massachusetts rule laid down in *Whipple v. Grandchamp*, 261 Mass. 40, 158 N.E. 270, 57 A.L.R. 974, that violation of the statute by undertaking to give medical treatment without a license is in itself a substantive ground of liability for injuries proximately resulting from the treatment.
  16. *Hansen v. Isaak*, remanded to trial court in 70 S.D. 529, 19 N.W.2d 521 (1945), resulting in judgment for the plaintiff; rehearing denied 72 S.D. 311, 33 N.W.2d 561 (1948).
  17. *Mims v. Ragland*, 59 Ga.App. 703, 2 S.E.2d 174 (1939), where there was evidence that the chiropractor had used an unsterilized razor blade in operating on the patient.

a chiropractor employs a method of treatment which is outside the scope of chiropractic practice and within the realm of medicine or surgery, he thereby assumes to act as a doctor of medicine and will be held to the standard of care of such doctor. In the other cases it can be seen that although the methods of treatment were within the scope of chiropractic practice, the defendants were nonetheless negligent under the standards of their own school of healing; and even other chiropractors would probably testify that the defendants' lack of skill and care was a violation of the principles of chiropractic practice. In a few cases liability against a chiropractor has been successfully predicated on the ground that treatment was unduly violent; and here again, as with the cases last-discussed, the courts can find negligence and still apply the standards of the chiropractic school of healing. Thus, one court affirmed a judgment against a chiropractor where there was substantial evidence other than expert testimony that a fracture of the plaintiff's rib was the result of the chiropractor's negligence in giving spinal adjustments after diagnosing her condition as tic douloureux, an inflammation of the fifth cranial nerve, which originates in the brain and has absolutely no connection with the vertebrae.<sup>18</sup> Recently a chiropractor was held liable in a wrongful death action in which there was expert testimony that the cause of death was injury to the patient's spinal cord coverings resulting in intraspinal bleeding, compression of the spinal cord, spinal concussion and shock. The court held that there was sufficient evidence to sustain the finding of the jury that the proximate cause of the injury was the defendant's violent "manipulations" of the patient's spine.<sup>19</sup>

The recent Washington case of *Carney v. Lydon*,<sup>20</sup> although involving liability of a sanipractor, may be important on the question of liability of chiropractors for negligent treatment. In that case, after a verdict for the plaintiff the trial court rendered a judgment n. o. v., basing its judgment on the rule that negligence of a regular medical practitioner is not established where doctors of "equal skill and learning" disagree as to the propriety of the defendant's method of treatment.<sup>21</sup> The trial court held that the same rule applied, by analogy, to all practitioners of the healing arts. The Supreme Court reversed and ordered judgment on the verdict, holding that "the analogy does not apply to a drugless healer because he is restricted by statute to that which is permitted him under the license issued to him." The rule of this case, then, is that when healers of equal skill and learning, and of the defendant's own school of healing, express

---

18. *Morrison v. Lane*, 10 Cal.App.2d 634, 52 P.2d 530 (1935).

19. *York v. Daniels*, 259 S.W.2d 109 (Mo. 1953).

20. 36 Wash.2d 878, 220 P.2d 894 (1950), noted 49 Mich. L. Rev. 774 (1951), 27 Wash. L. Rev. 38 (1952). The plaintiff, a victim of diabetes, went to the defendant, licensed as a drugless healer, for treatment. The defendant informed her that he could treat diabetes without the aid of insulin or other drugs. He prescribed a diet for the plaintiff and gave instructions for the taking of baths. Following the defendant's advice, the plaintiff's condition became so serious that she finally had to be admitted to a hospital for insulin treatments in order to save her life.

21. *Fritz v. Horsfall*, 24 Wash.2d 14, 163 P.2d 148 (1945).

contrary opinions as to the propriety of the defendant drugless healer's methods of treatment, the jury may, nevertheless, find the defendant negligent by accepting the opinions of those healers expressing disapproval of the defendant's methods and rejecting the opposing opinions. It seems reasonable to assume other courts may apply this rule in cases in which the defendant healer is a chiropractor.

In cases involving alleged negligence in diagnosis of the patient's ailment there is considerable variance in the decisions as to the standard of care to be applied. In a few cases it has been held or recognized that liability can be predicated upon the negligence of a chiropractor in the diagnosis of the ailment of his patient even though the "school of healing" rule purportedly is followed. In *Janssen v. Mulder*,<sup>22</sup> the defendant undertook to treat a child suffering from diphtheria. In the wrongful death action which followed, the defendant admitted he had no experience in making bacteriological examinations, would be unable to tell diphtheria from typhoid fever, could not state the symptoms of tonsillitis (the disease which the defendant had stated was the cause of the child's fever, according to the mother's testimony) and had not taken the child's temperature. The defendant testified that he had merely "adjusted" one vertebrae of the patient's spine and he stated, "We do not diagnose." The court held the defendant liable in failing or neglecting to ascertain the nature of the child's ailment before treating her.<sup>23</sup> This holding in effect requires the chiropractor to make a medical diagnosis or stand liable for a failure to do so, even though the court purports to apply the standards of the "school of healing" rule. However, in *Nelson v. Dahl*<sup>24</sup> it was held that no negligence was shown where the plaintiff's intestate, who had a weak heart and a goiter, sought relief from headaches and died from heart failure due to toxemia, (namely, poison coming into the blood from the goiter) following chiropractic treatment. The court stated that the result in itself was not enough to show negligence and that the failure to diagnose did not indicate negligence, since the school of chiropractic limited its field of operation to the spine and making the abnormal normal, which "could seldom have harmful consequences." The holding of this court is in accord with the line of cases in which the "school of healing" standard is strictly followed, the reasoning being that chiropractic does not concern itself with "diseases" or "diagnosis" thereof, but only with "adjusting" or "subluxations."

In Wisconsin if the negligence relied upon for recovery is as to treatment only, the "school of healing" rule is followed and the standard of care is that of the school of chiropractic; but if the negligence is in diagnosis as

22. 232 Mich. 183, 205 N.W. 159, 25 N.C.C.A. 248 (1925).

23. See also, *Beech v. Hunter*, 14 Tenn.App. 188 (1931), as noted in 19 A.L.R.2d 1208, in which the plaintiff was afflicted with Pott's disease, a tubercular eating away of the vertebrae easily recognizable in its advanced stages. The defendant, who had diagnosed the ailment as a misaligned vertebrae, was held liable for negligence in failing to ascertain the cause of the patient's ailment.

24. 174 Minn. 574, 219 N.W. 941 (1928).

well as treatment, the standard of care is that of a recognized school of medical profession.<sup>25</sup> The reasoning of the Wisconsin court is that any diagnosis is outside the scope of chiropractic practice; therefore the Wisconsin holding is an extreme application of the earlier-mentioned rule that when a chiropractor acts outside the scope of his school of healing and within the realm of medicine or surgery, he will be held to the standard of care of a medical doctor.<sup>26</sup> This reasoning may have been followed in a recent Montana case in which the defendant was held liable for erroneously diagnosing a brain tumor as two misplaced vertebrae.<sup>27</sup> The court made no mention of the "school of healing" rule as to the standard of care, or of any exceptions thereto; but did cite the Wisconsin case<sup>28</sup> as authority for its holding, and stated that no good reason exists why the law applied to physicians, surgeons, dentists and the like, should not apply to chiropractors.

The Washington case of *Kelly v. Carroll*,<sup>29</sup> was like the *Carney* case, previously discussed, in that the defendant drugless healer was not of the chiropractic school, but it may be important on the question of the liability of chiropractors. In that case the defendant was a licensed drugless healer—a sanipractor—and was held liable in a wrongful death action, the court approving the trial court's refusal to instruct on the "school of healing" standard of care. The negligence on which liability was predicated by the court was the failure of the defendant to advise other treatment when he knew or should have known that his method was ineffectual. The court laid down four "basic propositions" as the premises of its opinion: (1) a drugless healer is not a doctor; (2) drugless healers cannot qualify as expert witnesses as to matters in the general realm of medicine and surgery; (3) drugless healers do not belong to a school of medicine; (4) one who does not have a license to practice medicine and surgery is, nevertheless, liable for malpractice when he assumes to act as a doctor, and is to be judged as if he were a doctor because of those acts. Reasoning from these principles, the court held that the "school of healing" standard is not applicable to drugless healers, and if the drugless healer undertakes to treat a disease for which, in the highest level of medical science, there is a generally recognized treatment he will be held to the standard of care of the reasonably skilled and trained doctor of medicine and surgery. The court further held that when a drugless healer knows or should know that his method of treatment is not of a character produc-

25. *Kuechler v. Volgmann*, 180 Wis. 238, 192 N.W. 1015, 31 A.L.R. 826 (1923).

26. *Treptau v. Behrens Spa*, 247 Wis. 438, 20 N.W.2d 108, 19 N.C.C.A. N.S. 1 (1945); and see *Kuechler v. Volgmann*, 180 Wis. 238, 192 N.W. 1015, 31 A.L.R. 826 (1923), holding that the practice of chiropractic does not include diagnosis.

27. *Bakewell v. Kahle*, 125 Mont. 89, 232 P.2d 127 (1951).

28. *Kuechler v. Volgmann*, 180 Wis. 238, 192 N.W. 1015, 31 A.L.R. 826 (1923).

29. 36 Wash.2d 482, 219 P.2d 79, 19 A.L.R.2d 1174 (1950), cert. den. 340 U.S. 892 (1950). The defendant diagnosed the patient's complaint as a "reaction" and treated him with hot and cold packs and "sine wave" treatments. After the twelfth day the defendant advised the patient's wife to call in a physician. The doctor diagnosed the ailment as appendicitis. The condition was so advanced that an operation was delayed, and eight days later the patient died.

tive of reasonable success, it is his duty to cease and to advise his patient to seek other relief. The court stated that the healer may be found negligent under this rule, although the patient knows that such healer belongs to a school which will not use or advise the kind of treatment which is contended should have been given or advised. This second holding of the *Kelly* case was followed in the *Carney* case although in the latter case the court did not indicate the standard of care against which the healer's conduct was tested under this rule.

The state of Washington has a series of statutes regulating all authorized forms of drugless healing except osteopathy and chiropractic,<sup>30</sup> and a separate series of statutes regulating the practice of chiropractic.<sup>31</sup> Therefore the Washington statutes cannot be looked to for support for the abandonment of the "school of healing" standard, since it would seem that if the court were to base its decision on the statutes, the regulation by the legislature of healers according to their schools would lend support to the "school of healing" rule rather than calling for abandonment of the standard. Furthermore, the Utah case of *Walkenhorst v. Kesler*,<sup>32</sup> cited in the *Kelly* case, held the "school of healing" standard inapplicable to a chiropractor on the ground that the regulatory statute did not recognize a division of the healing arts into "schools of healing." The court in the *Kelly* case, in holding that the "school of healing" standard was inapplicable, stated: "Their qualities are so far inferior to those of a doctor that the law will conclusively presume that they are not upon terms of equality which would entitle their opinions to cancel out the best medical opinion available." In other words, this court is among those that hold the "school of healing" standard inapplicable to drugless healers since they feel that such healers, because of their limited qualifications and methods, are dangerous as presently regulated and must be dealt with more strictly. Squared opposed, however, is a long line of cases which apply the general rule that the standard of care is that of the defendant's own school.<sup>33</sup>

In conclusion, it can be seen that apart from those cases in which the treatment administered by the defendant is so violent or careless as to constitute malpractice by the standards of any school of healing, the rules concerning liability of chiropractors for malpractice vary considerably in different jurisdictions. If it is the policy of the state to deal more strictly

30. Wash. Rem. Rev. Stat. § 10112 et seq. (1933).

31. Wash. Rem. Rev. Stat. § 10098 et seq. (1933).

32. 92 Utah 312, 67 P.2d 654 (1937), in which a cause of action was held to have been sufficiently stated where the complaint alleged that the chiropractor had negligently failed to properly diagnose the patient's condition as a broken hip, but informed the patient that the pain he was suffering in his hip was merely rheumatism which was caused by portions of the patient's spinal column being out of alignment; and that the defendant failed to recognize symptoms of infections in the patient's hip, but informed him that he had a mere boil on his hip and not to worry.

33. *Chesney v. People*, 121 Colo. 73, 212 P.2d 1011 (1949) (chiropractor); *Ellinwood v. McCoy*, 8 Cal.App.2d 590, 47 P.2d 796 (1935), (drugless healer); *Hardy v. Dahl*, 210 N.C. 530, 187 S.E. 788 (1936), (naturopath); *Bolles v. Kinton*, 83 Colo. 147, 263 Pac. 26, 56 A.L.R. 814 (1929), (osteopathic physician); *Grainger v. Still*, 187 Mo. 197, 85 S.W. 1114, 70 L.R.A. 49 (1905), (osteopathic physician and surgeon).

with the practice of drugless healing, the proper remedy does not lie in holding the "school of healing" rule inapplicable to such schools of healing. Most cases which so hold, although probably correct from the standpoint of the "equities" involved, seem lacking in logical reasoning. It is submitted that the proper remedy lies in a revision of the statutes. A partial solution to this problem may be the adoption of a statute similar to that of Wisconsin which prohibits certain classes of drugless healers from treating any specific disease except on the advice of a physician.<sup>34</sup> A further legislative solution would be the enactment of a "basic science act" requiring applicants for a chiropractic license to first pass an examination in the basic sciences before they are permitted to be examined by the chiropractic examining board.<sup>35</sup> Although the Wyoming court has not yet been confronted with the problem of the liability of chiropractors for malpractice, it is submitted that the Wyoming statutes are in need of revision so that if such a case does arise, the court would be relieved of the controversy concerning the merits of the various branches of the healing arts.

JERALD E. DUKES

#### A STUDY OF THE WYOMING MISCEGENATION STATUTES

The first ban on interracial marriage was passed in Maryland in 1661.<sup>1</sup> Since that time, forty states have followed with statutory bans on interracial marriages.<sup>2</sup> Twenty-nine states still have such prohibitions.<sup>3</sup>

34. Wis. Stat. § 147.185 (1949).

35. The sciences generally considered as basic are anatomy, physiology, chemistry, bacteriology and pathology. According to Memorandum, Bureau of Legal Medicine and Legislation, American Medical Association (1950), eighteen of the states and of the District of Columbia presently have such statutes. It is interesting to note that neither California nor Wyoming, with their large ratios of chiropractors, have such statutes.

1. "Foreasmuch as divers free-born English women, forgetful of their free conditions, and to the disgrace of our nation, do inter-marry with negro slaves, by which divers suits may arise, touching the issue of such women, and a great damage doth befall the master of such negroes, for preservation whereof for deterring such free-born women from such shameful matches, be it enacted: that whatsoever free-born woman shall intermarry with any slave, from and after the last day of the present assembly, shall serve the master of such slave during the life of her husband; and that all the issues of such free-born women, so married, shall be slaves . . . And be it further enacted: That all the issues of English, or other free-born women, that have already married negroes, shall serve the master of their parents, till they be thirty years of age and no longer." *Proceedings of the General Assembly, 1637-1664*, pp. 533-534; see also, Brackett, *The Negro in Maryland*, pp. 32-33; Reuter, *Race Mixture*, p. 78.
2. Alabama, Ala. Code § 14-360 (1940); Arizona, Ariz. Code Ann. §§ 63-107 and 63-108 (1939); Arkansas, Ark. Stat. § 55-104 (1947); California, Cal. Civil Code § 60 (1937) (held unconstitutional in *Perez v. Lippold*, 32 Cal.2d 711, 198 P.2d 17 (1948)); Colorado, Colo. Stat. Ann. § 107-2 (1935); Delaware, Del. Code § 13-101 (1953); Florida, Fla. Stat. §§ 1.01, 741.11, 741.12 (1953); Georgia, Code of Ga. Ann. §§ 53-106, 53-312 (1933); Idaho, Idaho Code § 32-206 (1947); Indiana, Burns, Ind. Stat. Ann. §§ 44-104, 44-105 (1933) (Baldwin's Ind. Stat. Ann. § 5619 (1934)); Iowa (omitted in 1851); Kansas (omitted Laws v. 49 (1857)); Kentucky, Ky. Rev. Stat. § 402.070 (1953); Louisiana, La. Rev. Stat. § 9-201 (1950); Maine, Act of 1786, repealed by Laws 1883 p. 16; Maryland, Md. Flack's Code § 27-466 (1951); Massachusetts, repealed by Acts 1843 c. 5; Michigan, amended by Act 23, Session Laws