

## Opinion No. 16-1723

January 26, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable Canuto Alarid, Probate Judge of Santa Fe County, Santa Fe, New Mexico.

### **Distribution of community property.**

### **OPINION**

{\*296} In response to your oral request when I met you today on the street, I write this as a statement of my opinion concerning the distribution of property under Sections 1840, 1841 and 1842 of the Codification.

Sections 1840 and 1841 relate only to the community property, while Section 1842 relates to other property. Community property is defined by Section 2764 of the Codification, from which you will see that it is what was known in the Spanish law as "bienes gananciales."

Section 1840 declares that upon the death of the wife, the entire community property belongs to the surviving husband, except such portion as may have been set apart to her by a judicial decree for her support and maintenance. Section 1841 provides that upon the death of the husband, one-half of the community property goes to the surviving wife, and unless the other half of the community property has been disposed of by will made by the husband, it goes one-fourth to the surviving wife and the remaining three-fourths of that half goes in equal shares to the children of the husband, and further as provided by law.

Section 1842 provides generally as to all property of any person who dies without disposing of the estate by will, subject to the provisions of Sections 1840 and 1841, which is to be distributed one-fourth to the surviving husband or wife, and the remainder in equal shares to the children of decedent, and further as provided by law.

The meaning of the phrase "further as provided by law," is shown by Section 1845, the effect of that section being, as construed by our Supreme Court, that if a husband or wife dies leaving no will and no children, the survivor inherits all of the property of the deceased.

In other words, which may, perhaps, make this plainer, upon the death of a husband, who has made no will, the wife takes one-half of the community property, and one-fourth of the remainder of his estate, if he has left any children, and those children take three-fourths {\*297} of that half, but if there are no children, the wife takes it all. As to other property, if the husband makes no will, the surviving wife gets one-fourth, and the

remainder goes in equal shares to the children, but if there are no children, the wife takes it all.